
EXHIBIT I

SSG RECREATION FUND 01, LLC COMPANY AGREEMENT

**SSG RECREATION FUND 01, LLC
COMPANY AGREEMENT**

January 8, 2024

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. ORGANIZATIONAL MATTERS.....	1
1.1. Formation.....	1
1.2. Name.....	1
1.3. Principal Place of Business; Other Places of Business	1
1.4. Business Purpose	2
1.5. Certificate of Formation; Filings	2
1.6. Designated Agent for Service of Process	2
1.7. Term.....	2
ARTICLE 2. CAPITAL; CAPITAL ACCOUNTS; MEMBERS.....	2
2.1. Capital Contributions.....	2
2.2. Manager's and Affiliates' Capital Contributions.....	3
2.3. Capital Contributions Generally.....	3
2.4. Making of Capital Contributions.....	3
2.5. Capital Accounts.....	4
2.6. Additional Members; Increasing Members.....	4
2.7. Admission of Managers	4
2.8. Member Capital	4
2.9. Member Loans.....	4
2.10. Limited Liability of the Members.....	5
ARTICLE 3. DISTRIBUTIONS	5
3.1. Distributions Generally.....	5
3.2. Interim Distributions	5
3.3. Tax Liability Distributions	6
3.4. Distributions Upon Liquidation.....	6
3.5. Withholding	6
3.6. Distributions In-Kind	7
ARTICLE 4. ALLOCATIONS OF NET INCOME AND NET LOSSES.....	7
4.1. Allocation of Net Income and Net Losses.	7
4.2. Regulatory Allocations	8
4.3. Tax Allocations.....	9
4.4. Other Provisions.....	10
ARTICLE 5. OPERATIONS.....	10
5.1. Authority of the Manager.....	10
5.2. No Member Management.....	13
5.3. Other Activities.	13
5.4. Valuation	16
5.5. Manager's Liability; Indemnification.	16
5.6. Fees and Expenses.....	18

TABLE OF CONTENTS

(continued)

	<u>Page</u>
ARTICLE 6. INVESTMENT OBJECTIVES AND LIMITATIONS.....	18
6.1. Objectives.....	18
6.2. Investment Limitations	18
ARTICLE 7. BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS.....	19
7.1. Books and Records	19
7.2. Delivery of Records	19
7.3. Inspection.....	19
7.4. Reports to the Members.	19
7.5. Meetings of Members	20
7.6. Fund Tax Elections; Tax Controversies	20
7.7. Tax Representations of Flow-Through Entities	20
7.8. Confidentiality of Investment Information	20
7.9. Anti-Money Laundering Obligations.....	20
ARTICLE 8. MEMBERSHIP INTERESTS; TRANSFERS; ENCUMBRANCES OF MEMBERSHIP INTERESTS	21
8.1. Member Transfers	21
8.2. Manager Transfers and Change of Control.	21
8.3. Encumbrances	21
8.4. Further Restrictions	21
8.5. Rights of Assignees.....	22
8.6. Admissions, Withdrawals and Removals	23
8.7. Admission of Assignees as Substitute Members	23
8.8. Withdrawal of Certain Members	23
8.9. Conversion of Membership Interest	25
8.10. Limitation on Participation	25
ARTICLE 9. DISSOLUTION; LIQUIDATION; TERMINATION OF THE FUND.....	26
9.1. Limitations.....	26
9.2. Exclusive Causes.....	26
9.3. Effect of Dissolution	27
9.4. Liquidation and Final Distribution Proceeds.....	27
9.5. Restoration of Deficit Capital Account Balance	28
ARTICLE 10. MISCELLANEOUS	28
10.1. Fund Counsel	28
10.2. Appointment of Manager as Attorney-in-Fact.....	29
10.3. Addition of Members; Amendments.....	30
10.4. Accounting and Fiscal Year	31
10.5. Entire Agreement	31
10.6. Further Assurances	32
10.7. Notices	32

TABLE OF CONTENTS

(continued)

	<u>Page</u>
10.8. Governing Law; Venue and Jurisdictions	32
10.9. Binding Effect	32
10.10. Severability	32
10.11. Confidentiality	32
10.12. Counterparts	33
10.13. Waivers	33
10.14. Preservation of Intent	33
10.15. Certain Rules of Construction	34
10.16. Arbitration	34
10.17. Tax Disclosure	34
10.18. Limitation of Liability of Service Provider	34
ARTICLE 11. DEFINITIONS	35

COMPANY AGREEMENT

OF

SSG RECREATION FUND 01, LLC

This COMPANY AGREEMENT (the "Agreement") of SSG RECREATION FUND 01, LLC, a Texas limited liability company (the "Fund") dated as of January 8, 2024, is hereby entered into by and among SSG Fund Management, LLC, a Texas limited liability company (the "Manager"), and the Persons named as members of the Fund (the "Members") in the list maintained by the Manager in the books and records of the Fund (the "List of Fund Members") and in the signature pages hereto.

RECITALS

WHEREAS, the parties hereto desire to enter into this Agreement in order to (i) organize and establish the terms of the Fund and (ii) admit as members those Persons named in the List of Fund Members.

WHEREAS, for purposes of this Agreement, capitalized terms not otherwise defined herein shall have the meanings set forth in Article 11.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1.

ORGANIZATIONAL MATTERS

1.1. **Formation.** The Members and Manager have established the Fund as a limited liability company under the TBOC for the purposes and upon the terms and conditions hereinafter set forth. The rights and liabilities of the Members of the Fund shall be as provided in the TBOC, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the TBOC, the terms and conditions contained in this Agreement shall govern.

1.2. **Name.** The name of the Fund is "SSG Recreation Fund 01, LLC". The Fund may also conduct business at the same time under one or more fictitious names if the Manager determines that it is in the best interests of the Fund to do so. The Manager may change the name of the Fund from time to time without the consent of any other Member by filing an amendment to the Certificate of Formation of the Fund in accordance with applicable law. The Manager shall notify the Members in the event that (i) the Fund conducts business under a fictitious name or (ii) the Manager changes the name of the Fund.

1.3. **Principal Place of Business; Other Places of Business.** The principal place of business of the Fund is located at 516 E. Byron Nelson Blvd., #1670, Roanoke, Texas 78262-9998, or such other place within or outside the State of Texas, but within the United States, as the Manager may from time to time designate, provided that the Manager shall promptly give written notice of any

change to the Members. The Fund may maintain offices and places of business at such other place or places within the United States as the Manager deems advisable.

1.4. **Business Purpose.** The principal purpose and investment objective of the Fund is to make investments in accordance with the investment objectives, policies, procedures and restrictions more specifically set forth in Article 5 and Article 6. In connection therewith, the Fund shall have the power to engage in all activities and transactions which the Manager deems necessary or advisable, including, without limitation:

- (a) identifying and analyzing Portfolio Investment opportunities;
- (b) making, holding and managing Portfolio Investments;
- (c) disposing, refinancing, recapitalizing and securitizing of all or any portion of any Portfolio Investments;
- (d) causing the Fund to perform all obligations imposed upon it by this Agreement, by law or otherwise;
- (e) investing all or substantially all of its assets in the Fund; and
- (f) engaging in any other activities incidental or ancillary to the foregoing as the Manager deems necessary or advisable.

1.5. **Certificate of Formation; Filings.** The Manager has caused to be filed a Certificate of Formation in the Office of the Secretary of State of the State of Texas as required by the TBOC. The Manager may execute and file any duly authorized amendments to the Certificate from time to time in a form prescribed by the TBOC. The Manager shall also cause to be made, on behalf of the Fund, such additional filings and recordings as the Manager shall deem necessary or advisable, including, without limitation, any filings and/or recordings to qualify or register the Fund to do business in each jurisdiction in which it is required to do so.

1.6. **Designated Agent for Service of Process.** So long as is required by the TBOC, the Fund shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Fund in the State of Texas. As of the date of this Agreement, the address of the registered office of the Fund in the State of Texas is 516 E. Byron Nelson Blvd., #1670, Roanoke, Texas 78262-9998. The Fund's registered agent for service of process at such address is SSG Fund Management, LLC.

1.7. **Term.** The existence of the Fund commenced on the date that the Certificate of Formation was filed with the Office of the Secretary of State of the State of Texas, and shall continue until the Fund is dissolved and terminated in accordance with Article 9.

ARTICLE 2.

CAPITAL; CAPITAL ACCOUNTS; MEMBERS

2.1. **Capital Contributions.** The Fund hereby authorizes Twenty Thousand (20,000) of its Class A Membership Interest Units for sale and issuance to qualified investors pursuant to

Subscription Agreements executed with the Fund. The Class A Units shall be issued in two (2) subclasses: Class A-1 Units and Class A-2 Units. The initial sales price of each Class A Unit regardless of subclass is One Thousand Dollars (\$1,000). Each Class A Member, in exchange for its Membership Interest, shall make a Capital Contribution in the amount set forth in the List of Fund Members. The amount of each Class A-1 Member's Capital Contribution shall be at least Three Hundred Thousand Dollars (\$300,000) (US), and the amount of each Class A-2 Member's Capital Contribution shall be at least Fifty Thousand Dollars (\$50,000) (US). The Fund authorizes One Thousand (1,000) Class B Membership Interest Units, all of which have been sold and issued to the Performance Members. The List of Fund Members shall be amended from time to time by the Manager to reflect the admission of Additional Members pursuant to Section 2.6 and the admission of Substitute Members pursuant to Sections 8.6 and 8.7, as well as to reflect any changes in the Members' respective Capital Contributions pursuant to the terms of this Agreement. Each party hereto acknowledges and agrees that upon the written acceptance of a Person's Subscription Agreement by the Manager or, in the case of the admission of a Substitute Member, the consent of the Manager to the admission of such Person as a Substitute Member, such Person is a Member. Each party hereto acknowledges and agrees that a Person shall be admitted as an Additional Member or Substitute Member upon (i) satisfaction of the foregoing and (ii) such Person's satisfaction of all conditions to admission set forth in Section 2.6 or Sections 8.6 and 8.7, as applicable and (iii) the execution by or on behalf of a Person of a counterpart signature page to this Agreement.

2.2. **Manager's and Affiliates' Capital Contributions.** Capital Contributions of the Manager or its Affiliates do not bear the Management Fee, the Placement Fee, and other fees and profit sharing in favor of the Manager but do bear their pro rata share of all other applicable Fund expenses.

2.3. **Capital Contributions Generally.** Except as set out in Section 5.5.4 and as otherwise required by law, at no time shall a Member be required to make any additional Capital Contributions to the Fund.

2.4. **Making of Capital Contributions.**

2.4.1. The cumulative Capital Contribution made to the Fund by each Member at any given point in time during the term of the Fund shall be set forth in the Fund's books and records.

2.4.2. The Members may make initial Capital Contributions, or increase their Capital Contributions, in cash, generally on the first day of each month during the Investment Period or on such other date as specified by the Manager. The initial closing of the Fund's acceptance of Members' Capital Contributions to the Fund shall be on such date (the "Initial Closing") as the Manager shall accept subscriptions for Interests in the Fund for aggregate consideration sufficient for the Fund to make its first Portfolio Investment.

2.4.3. During the Investment Period and as and when appropriate from time to time, in the sole discretion of the Manager, either to (i) permit the Fund to make a Portfolio Investment and/or to pay the Fund's obligations (including, without limitation, any indemnification obligations under Section 5.5, the Management Fees, the Placement Fee, other Fund Expenses and any indebtedness of the Fund) and other liabilities (or to establish adequate reserves) or (ii) pay the Fund's obligations as they arise, the Manager, subject to the

applicable provisions of this Section 2.4, may accept additional Capital Contributions from existing Members or from new Members in accordance with Section 2.4.2.

2.4.4. Capital Contributions of Members not invested in Portfolio Investments or used to pay Fund Expenses shall only be invested in cash and/or Money Market Investments until such amounts are used to make a Portfolio Investment or to pay Fund Expenses.

2.5. **Capital Accounts.** A Capital Account shall be established and maintained for each Member in accordance with the terms of this Agreement.

2.6. **Additional Members; Increasing Members.** The Manager may in its sole discretion, at any time and from time to time on or before the Offering Expiration Date, (1) issue Membership Interests in the Fund directly from the Fund by the sale and issuance of additional Class A Units, and admit one or more recipients of such Membership Interests as Additional Members, on such terms and conditions, if any, as the Manager may determine consistent with this Agreement, and (2) permit one or more Members to increase their Capital Contributions (each, an "Increasing Member") through the purchase of additional Class A Units on the terms and conditions contained in this Agreement (including, without limitation, this Section 2.6). Upon the admission of any Additional Member or the increase in Capital Contributions by any Increasing Member, the Manager shall cause this Agreement to be amended (as necessary), in accordance with Section 10.3, to reflect such admission or increase (as applicable). Subject to the first sentence of this Section 2.6, no action or consent by any Member shall be required in connection with the admission of an Additional Member or the increase of Capital Contributions by an Increasing Member or such an amendment to this Agreement; provided that each Additional Member and each Increasing Member shall execute and deliver such instruments and take such actions as the Manager shall deem necessary or desirable to effect such admission or increase, including, without limitation, the execution of a Subscription Agreement and an appropriate instrument of adherence relating to this Agreement providing that such Additional Member or such Increasing Member agrees to be bound by the terms and provisions hereof. The List of Fund Members shall be amended as appropriate to reflect the admission of each Additional Member and the increase in Capital Contributions of each Increasing Member.

2.7. **Admission of Managers.** With the consent of a Supermajority in Interest of the Class B Members, one or more Persons may be admitted as Managers of the Fund by such Person's execution of an instrument evidencing their agreement to be bound by this Agreement upon the occurrence of (a) the Incapacity or removal of the last remaining Manager, and (b) the continuation of the business of the Fund pursuant to Section 9.2(c).

2.8. **Member Capital.** Except as otherwise provided in this Agreement, (a) no Member shall demand or be entitled to receive a return of interest on its Capital Contributions or Capital Account, (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Fund as a return of capital on account of such Capital Contributions, and (c) the Fund shall not redeem the Membership Interest of any Member.

2.9. **Member Loans.** No Member shall be required to make any loans or otherwise lend any funds to the Fund. Subject to Section 5.1.2(f), a Member shall be permitted (but not required) to make loans to, act as surety or endorser for, assume one or more specific obligations of, provide collateral for, or enter into other similar credit, guarantee, financing or refinancing arrangements with, the Fund for any purpose (including, without limitation, in connection with any Portfolio Investment),

provided that such loans are (a) at an annual rate of interest as may be mutually agreed upon by the Fund and the relevant Member and (b) on terms no less favorable to the Fund than would be available in a transaction with an unaffiliated party. No loans made by any Member to the Fund shall have any effect on such Member's Percentage Interest, such loans representing a debt of the Fund payable or collectible solely from the assets of the Fund in accordance with the terms and conditions upon which such loans were made.

2.10. **Limited Liability of the Members.** Notwithstanding anything to the contrary contained in this Agreement and except as otherwise required by law (including, without limitation, Section 101.206 of the TBOC), the liability of a Member to the Fund in no event shall exceed the amount of its Capital Contribution and its obligations under Section 5.5.4. No Member, in its capacity as such, shall owe any fiduciary duty to the Fund or to any other Member, provided that the foregoing shall not limit a Member's implied covenant of good faith and fair dealing. The Members further acknowledge and agree that any Member (and any Affiliate thereof) may lend money to, act as trustee under indentures of, accept investment banking engagements from, own equity interests in, and engage generally in any kind of business with, any Person (subject to the TBOC and the terms contained elsewhere in this Agreement), without any duty to account therefor to the Fund or any other Member.

ARTICLE 3.

DISTRIBUTIONS

3.1. **Distributions Generally.** Subject to Sections 3.6 (Distributions In Kind) and 5.1.5 (Manager Invested Capital), and except as otherwise provided in Article 9 (Dissolution; Liquidation; Termination of the Fund) hereof, the Manager in its sole discretion shall make distributions of Available Cash to the Members pursuant to Section 3.2 and Section 3.3. Notwithstanding anything to the contrary contained in this Agreement, the Fund and the Manager, on behalf of the Fund, shall not be required to make a distribution to any Member on account of its Interest in the Fund if such distribution would violate the TBOC or other applicable law.

3.2. **Interim Distributions.** Distributions other than distributions made in accordance with Section 3.3 or Section 3.4 shall be made to the Members in accordance with this Section 3.2:

3.2.1. Subject to Section 3.5.2, One Hundred Percent (100%) of Available Cash shall be distributed to the Class A Members pro rata according to the number of Class A Units held by each (regardless of sub-class) each until Members shall have received aggregate distributions equal in amount to the amount of the Members' Unreturned Capital Contributions plus the amount of the Preferred Return.

3.2.2. Thereafter, Ninety-Seven Percent (97%) of the Class A-1 Portion shall be distributed to the Class A-1 Members pro rata according to the number of Class A-1 Units held by each, and Three Percent (3%) of the Class A-1 Portion shall be distributed to the Class B Members pro rata according to the number of Class B Units held by each, and Ninety-Four Percent (94%) of the Class A-2 Portion shall be distributed to the Class A-2 Members pro rata according to the number of Class A-2 Units held by each, and Six Percent (6%) of the Class

A-2 Portion shall be distributed to the Class B Members pro rata according to the number of Class B Units held by each.

3.3. **Tax Liability Distributions.** Prior to the distribution of cash, if any, pursuant to Section 3.2, the Fund may, at the election of the Manager, in its sole discretion, make a cash distribution to the Manager in amounts intended to enable the Manager and the members of the Manager to discharge their United States federal, state and local income tax liabilities (including any estimated tax liabilities) arising from the allocations made pursuant to Article 4, but only to the extent provided in this Section 3.3, and in each case net of any cash distributions otherwise made to the Manager in respect of such allocations (a "Tax Liability Distribution"). The amount of any such Tax Liability Distribution shall not exceed the product of (a) the maximum combined United States federal and the highest relevant state and local tax rates applicable to the members of the Manager on the various types of income (*e.g.*, ordinary income, "qualified dividend income," net short-term capital gain or net long-term capital gain, as applicable), and taking into account the deductibility of state and local income taxes for United States federal income tax purposes and the character of the income in question and the holding period of any asset disposed of, and (b) the excess of the amount of income so allocated to the Manager over any Net Losses previously allocated to the Manager and not previously taken into account under this Section 3.3. Any Tax Liability Distributions shall reduce the amount of the next distribution(s) that the Manager would otherwise receive pursuant to Section 3.2 or pursuant to Article 9.

3.4. **Distributions Upon Liquidation.** Distributions made in conjunction with the dissolution and liquidation of the Fund shall be applied or distributed as provided in Article 9 hereof.

3.5. **Withholding.**

3.5.1. The Fund may withhold distributions or portions thereof if it is required to do so by any applicable governmental rule, regulation, or law. Each Member hereby authorizes the Fund to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Manager determines that the Fund is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. Any amounts so withheld or paid on behalf of or with respect to a Member pursuant to this Section 3.5 shall be deemed to have been distributed to such Member. To the extent that the cumulative amount of such withholding for any period exceeds the distributions to which such Member is entitled for such period, the amount of such excess shall be considered a loan from the Fund to such Member, with an annual rate of interest at LIBOR plus Two Percent (2.00)% (provided, however, that any income derived from such deemed loan shall not be allocated to or distributed to the Member requiring such loan), until discharged by such Member by repayment, which may, at the option of the Manager, be satisfied (a) out of distributions to which such Member would otherwise be subsequently entitled, or (b) by the immediate payment in cash to the Fund of such excess amount. The Manager, on behalf of the Fund, shall be entitled to take any other action it determines to be necessary or appropriate in connection with any obligation or possible obligation to impose withholding pursuant to any tax law or to pay any tax with respect to a Member. Unless prohibited by applicable law, each Member hereby unconditionally and irrevocably grants to the Fund a security interest in such Member's Membership Interest to secure such Member's obligation to pay to the Fund any amounts required to be paid pursuant to this Section 3.5. Each Member shall take such actions as the Fund shall request in order to

perfect or enforce the security interest created hereunder. Each Member's obligations hereunder shall survive the dissolution, liquidation or winding up of the Fund.

3.5.2. If any tax assessment or other governmental charge is withheld or deducted from any amount payable to the Fund, the amount so deducted or withheld will be treated for purposes of this Agreement as a Fund Expense; provided that to the extent such amount is withheld or deducted by reason of the status of some Members (the "Affected Members") but not all Members, the related Fund Expense shall (a) without duplication of any withholding deemed distributed pursuant to Section 3.5.1, reduce the amount of Available Cash distributed to such Affected Members pursuant to Section 3.2, and (b) without duplication, reduce the amount of Net Income (or increase the amount of Net Loss) allocated to such Affected Members pursuant to Section 4.1.2.

3.6. **Distributions In-Kind.** Subject to Section 9.2(b), no right is given to any Member to demand and receive property other than cash. The Manager may in its sole discretion make distributions in kind of Securities or other beneficial interests in real estate, either pursuant to this Article 3 or in connection with the liquidation of the Fund in accordance with Section 9.4. Any in-kind distributions shall be made in such a fashion as to ensure that the Fair Value is distributed and allocated in accordance with this Article 3 and Article 4 (as applicable) and that each Member receives not greater than its pro rata share of such in-kind distributions (except as otherwise provided in this Agreement), provided that the Fund shall not make any in-kind distributions to any Member (but will still allocate the Fair Value of the in-kind distribution as if such distribution were being made) if such Member has not been provided ten (10) days' advance written notice of the intent to make such in-kind distribution or if, in the opinion of counsel to such Member (which counsel and opinion shall be reasonably acceptable to the Manager), such in-kind distribution shall cause such Member to be in violation of any federal, state or local law or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction.

ARTICLE 4.

ALLOCATIONS OF NET INCOME AND NET LOSSES

4.1. Allocation of Net Income and Net Losses.

4.1.1. Net Income and Net Losses and items thereof shall be determined and allocated with respect to each Fiscal Year of the Fund as of the end of such Fiscal Year and at any time the Gross Asset Values of Fund Assets are adjusted pursuant to clause (b) or clause (c) of the definition thereof, and more often as required hereby or by the Code.

4.1.2. Subject to Section 3.5.2 and the other provisions of this Article 4, Net Income and Net Loss for any Fiscal Year or other period shall be allocated in a manner such that the Capital Account balances of each of the Members shall be equal to (A) the amount that each Member would have been entitled to receive pursuant to Sections 3.2 or 3.6 if the Fund were liquidated at such time and liquidating distributions were governed by Sections 3.2 or 3.6 rather than Section 9.4(c), assuming that all Fund Assets were sold for cash equal to their respective Gross Asset Values and all Fund liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Gross Asset Value of the Fund Assets securing such liability),

minus (B) such Member's share of Membership Minimum Gain and Member Minimum Gain, computed immediately before the hypothetical sale of Fund Assets.

4.2. **Regulatory Allocations.** Notwithstanding the foregoing provisions of this Article 4, the following special allocations shall be made in the following order of priority:

4.2.1. **Minimum Gain Chargeback.** If there is a net decrease in Membership Minimum Gain during a Fund taxable year, then each Member shall be allocated items of Fund income and gain for such taxable year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Membership Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section 4.2.1 is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

4.2.2. **Member Minimum Gain Chargeback.** If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fund taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Fund income and gain for such taxable year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with the provisions of Treasury Regulations Section 1.704-2(i)(3). This Section 4.2.2 is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

4.2.3. **Qualified Income Offset.** If any Member unexpectedly receives an adjustment, allocation, or distribution of the type contemplated by Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be allocated to all such Members (in proportion to the amounts of their respective Adjusted Capital Account Deficits) in an amount and manner sufficient to eliminate their respective Adjusted Capital Account Deficits as quickly as possible. It is intended that this Section 4.2.3 qualify and be construed as a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

4.2.4. **Limitation on Allocation of Net Loss.** If the allocation of Net Losses to a Member as provided in Section 4.1 hereof would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of Net Losses as will not create or increase an Adjusted Capital Account Deficit. The Net Losses that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to the limitations of this Section 4.2.4.

4.2.5. **Section 754 Adjustment.** To the extent that an adjustment to the adjusted tax basis of any Fund Asset pursuant to Code Section 743(b) or Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or, in the case of a distribution to a Member in a complete liquidation of its Membership Interest pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining

Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Fund in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to which such distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

4.2.6. **Nonrecourse Deductions and Member Nonrecourse Deductions.** The Nonrecourse Deductions for each taxable year of the Fund shall be allocated to the Members in proportion to their Percentage Interests. The Member Nonrecourse Deductions shall be allocated each year to the Member that bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

4.2.7. **Curative Allocation.** The allocations set forth in Sections 4.2.1, 4.2.2, 4.2.3, 4.2.4, and 4.2.6 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2(i). Notwithstanding the provisions of Section 4.1.2, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

4.3. **Tax Allocations.**

4.3.1. Except as provided in Section 4.3.2 hereof, for income tax purposes under the Code and the Treasury Regulations, each Fund item of income, gain, loss and deduction shall be allocated among the Members in the same manner as the Fund's correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Article 4.

4.3.2. Tax items with respect to a Fund Asset that is contributed to the Fund with a Gross Asset Value that varies from its basis in the hands of the contributing Member immediately preceding the date of contribution shall be allocated among the Members for income tax purposes pursuant to Treasury Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Fund shall account for such variation under any method approved under Code Section 704(c) and the applicable Treasury Regulations as chosen by the Manager. If the Gross Asset Value of any Fund Asset is adjusted subsequent to its contribution pursuant to the definition of "Gross Asset Value", subsequent allocations of income, gain, loss and deduction with respect to such Fund Asset shall take account of any variation between the adjusted basis of such Fund Asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations promulgated thereunder using any method approved under Code Section 704(c) and the applicable Treasury Regulations as chosen by the Manager. Allocations pursuant to this Section 4.3.2 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Losses and any other items or distributions pursuant to any provision of this Agreement.

4.4. **Other Provisions.**

4.4.1. For any Fiscal Year during which any part of a Membership Interest is transferred among the Members or to another Person, the portion of the Net Income, Net Losses and other items of income, gain, loss, deduction and credit that are allocable with respect to such part of a Membership Interest shall be apportioned between the transferor and the transferee under any method allowed pursuant to Section 706 of the Code and the applicable Treasury Regulations as determined by the Manager.

4.4.2. For purposes of determining a Member's proportional share of the Fund's "excess nonrecourse liabilities" within the meaning of Treasury Regulations Section 1.752-3(a)(3), each Member's interest in income and gain shall be such Member's Percentage Interest.

4.4.3. Notwithstanding any inconsistent provisions of Section 4.1, any deductions attributable to the Management Fee or the Placement Fee shall be allocated solely to the Members.

ARTICLE 5.

OPERATIONS

5.1. **Authority of the Manager.**

5.1.1. **General.** Subject to Section 5.3.1, the management, control, operation and policy of the Fund shall be vested exclusively in the Company's Board of Managers (including its duly appointed agents), and the Chairman of the Board of Managers shall have the power by itself (or through such agents) and shall be authorized and empowered on behalf and in the name of the Fund to carry out any and all of the objects and purposes of the Fund and to perform all acts (including the payment of Fund obligations) and enter into and perform all contracts and other undertakings, consistent with the provisions of this Agreement, that it may in its discretion deem necessary or advisable or incidental thereto. The Manager shall be elected by the Class B Members. The Class A Members shall have no right to select or remove the Manager of the Fund, or vote on any other Fund matter. Managers need not be residents of the State of Texas or Members of the Fund. Notwithstanding any other provision contained in this Agreement, the Manager may delegate any of the powers of the Manager contained in Section 5.1.1, or any other powers, to a third Person. Such delegated powers may be revoked at any time in the same manner as they are delegated. The Manager acknowledges that it is a fiduciary to the Fund and the Members (in their capacity as such). The Fund, and the Manager on behalf of the Fund, may enter into and perform the Subscription Agreements, the Investment Management Agreement, the Credit Agreement, any Side Letters, and any documents contemplated thereby or related thereto and any amendments thereto, without any further act, vote or approval of any Person, including any Member, notwithstanding any other provision of this Agreement. The Manager is hereby authorized to enter into the documents described in the preceding sentence on behalf of the Fund, but such authorization shall not

be deemed a restriction on the power of the Manager to enter into other documents on behalf of the Fund.

5.1.2. **Specific Authority.** Without in any way limiting the aforementioned but subject to Section 5.3.1 and any restrictions set forth in Article 6, the Manager, on behalf of the Fund, shall have the right, in its sole and absolute discretion, to, or cause the Fund to, as applicable:

(a) take all actions necessary to fulfill the Fund's purpose and objectives set forth in Section 1.4 and Article 6;

(b) identify, analyze, acquire, hold, manage and own Portfolio Investments;

(c) open, maintain and close bank accounts and draw checks or other orders for the payment of moneys;

(d) pursuant to Section 2.9 of this Agreement or otherwise solely in connection with a Credit Agreement, borrow money or cause the Fund to make contracts of guaranty and suretyship, or otherwise to become liable for or in respect of obligations of any one or more other Persons, all as the Manager deems necessary or appropriate in connection with any Portfolio Investment or in connection with the conduct or promotion of the business of the Fund, subject to the Debt Ratio Limitation;

(e) subject to Sections 5.1.2(d) and 5.1.2(p), lease, sell, refinance, securitize, pledge, grant a security interest in, encumber or otherwise dispose of all or any portion of the Fund's assets, including, without limitation, to take any or all of such actions with respect to the Fund's right to receive Capital Contributions hereunder, and the Fund's direct and indirect ownership interests in any one or more of the Portfolio Investments;

(f) subject to Section 5.1.2(d), loan funds to, or enter into other similar credit, guarantee, financing or refinancing arrangements for any purpose concerning any Portfolio Investment;

(g) direct the formulation of investment policies and strategies for the Fund in accordance with Section 1.4 and select and approve Portfolio Investments in accordance with this Agreement;

(h) (1) retain and enter into an agreement (the "Investment Management Agreement") with the Management Company on the basis referred to in Section 5.6.2 to provide economic and investment analysis and to perform such other acts as shall be approved by the Manager and (2) arrange for the Management Company to render significant management and investment assistance and advice to one or more Portfolio Investments; provided that the management and the conduct of the activities of the Fund shall remain the sole responsibility of the Manager and all final decisions relating to the selection and disposition of the Portfolio Investments shall be made exclusively by the Manager in accordance with this Agreement;

(i) hire or delegate third parties to hire attorneys, accountants, investment bankers, placement agents and such other agents and employees for the Fund as it may deem necessary or advisable, and authorize any such agent to act for and on behalf of the Fund;

(j) pay any and all fees and make any and all expenditures, subject to any caps on such fees and expenditures set forth in this Agreement, which the Manager, in its sole discretion, deems necessary or appropriate in connection with the organization of the Fund the offering and sale of Membership Interests and the management of the affairs of the Fund;

(k) subject to Section 2.4.3, create reasonable reserves and withdraw funds therefrom;

(l) exercise all powers and authority granted by the TBOC to Managers, except as otherwise provided in this Agreement;

(m) execute and deliver, and perform the terms, covenants and obligations of the Fund under, the agreements governing the Portfolio Investments;

(n) cause to be organized, or assist in organizing, any corporation, Membership, trust, limited liability company, association or other organization or entity under the laws of any jurisdiction, cause any such organization or entity to make, acquire or hold any Portfolio Investment which would otherwise be made, acquired or held by the Fund and to exercise any and all rights of the Fund as the holder of any capital stock or other interest of any kind in any such organization or entity;

(o) control all other aspects of the business or operations of the Fund (including, without limitation, with respect to any Portfolio Investments) that the Manager elects to so control;

(p) subject to the same limitations set forth in Section 5.1.2(e), enter into purchase and sale agreements to make or dispose of Portfolio Investments, which agreements may include such representations, warranties, covenants, indemnities and guaranties as the Manager deems necessary or advisable, and in connection therewith, determine the fair market value of such Portfolio Investments;

(q) institute, and settle or compromise, suits, administrative proceedings and other similar matters and confess a judgment against the Fund;

(r) make tax elections and act as the Partnership Representative of the Fund, as described in Section 7.6, and cause to be paid any and all taxes, charges and assessments that may be levied, assessed or imposed upon any Fund Assets; and

(s) make and perform such other agreements and undertakings as may be necessary or advisable to the carrying out of any of the foregoing powers, objects or purposes.

5.1.3. **Activities of Manager and Management Company.** The Manager shall, and shall cause the Management Company to, devote such time and effort to the management of the Fund and any Parallel Investment Vehicles(s) as it reasonably deems necessary to promote adequately the interests of the Fund and the mutual interests of the Members. The Manager may appoint itself the Management Company and in the absence of any election to the contrary, the Manager shall be the Management Company.

5.1.4. **Management Following Investment Period.** Following the expiration of the Investment Period until the dissolution and winding up of the Fund:

(a) the Manager and the Management Company shall be permitted to: (i) make further Portfolio Investments as to which the Fund, prior to the expiration of the Investment Period, was committed and which were in progress as of the end of the Investment Period (herein collectively called "Follow-up Investments"), and (iii) make further investments for the purpose of maintaining, improving or renovating Portfolio Investments (herein collectively called "Follow-on Investments"), using funds from existing Capital Contributions of the Members; and

(b) Except as hereinabove expressly provided, after expiration of the Investment Period, the Manager shall continue to act on behalf of the Fund to perform the functions of the Manager and have all the rights and privileges of the Manager hereunder.

5.1.5. **Manager Invested Capital.** In its sole discretion, the Manager may reinvest any undistributed operating cash flow generated by the Portfolio Investments in addition to any undistributed proceeds from the sale or disposition of Portfolio Investments at any time during the Investment Period (the "Reinvestment Option").

5.2. **No Member Management.**

5.2.1. **General.** No Member, in its capacity as such, shall participate in the management of the Fund or have any control over the Fund business or have any right or authority to act for or to bind the Fund.

5.2.2. **Manager as Member.** The Manager or any Affiliate thereof shall also be a Member to the extent that it purchases or becomes a transferee of all or any part of the Membership Interest of a Member, and to such extent shall be treated as a Member in all respects, provided that the Manager shall only conduct the business of the Fund in its capacity as Manager.

5.3. **Other Activities.**

5.3.1. **General Prohibitions; Allocation of Investment Opportunities.**

(a) From the date hereof through the earlier of (i) the end of the Investment Period, or (ii) the date on which all of the Members' aggregate Capital Contributions have been invested in or committed for Portfolio Investments, or reserved for Follow-On Investments (such date, the date upon which the Fund is "Fully Invested"), the Managing Entities shall not, directly or indirectly, make any

investment on behalf of, or cause any investment to be made by, or form, sponsor, manage, or offer or sell interests in, another membership, other investment vehicle or similar non-entity arrangement (an "Investment Vehicle") with a principal investment strategy substantially similar to the Investment Objective (each, a "Successor Fund"); provided that, subject to Section 5.1.3 and this Section 5.3.1, nothing in this Agreement shall prohibit the Managing Entities in their sole discretion, from:

- (i) creating and managing the Fund;
- (ii) creating and managing one or more Parallel Investment Vehicle(s) pursuant to Section 5.3.2(g), including without limitation investing on behalf of, or causing any investment to be made by, such Parallel Investment Vehicle;
- (iii) subject to Section 5.3.2(g), investing on behalf of, or causing any investment to be made by, another Investment Vehicle whose investment objective is not substantially similar to the Investment Objective; and
- (iv) subject to Section 5.3.2(g), continuing to make and participate in acquisitions and other investment opportunities without the participation of the Fund (whether or not such acquisitions or other investment opportunities are otherwise consistent with the purpose of the Fund).

(b) Subject to the other provisions of this Section 5.3, the Manager, the Management Company and any investment managers or advisors of any Successor Funds will allocate investment opportunities between the Fund and any Successor Fund. If a particular investment is suitable for the Fund and a Subsequent Fund, such investment will be allocated pro rata between such funds based upon the capital contributed to each fund.

(c) The Manager and the Management Company shall not take any action that would reasonably be expected to result in the loss of the limited liability for any Member.

5.3.2. Permitted Activities. Subject to Sections 5.1.3 and 5.3.1, and except as otherwise expressly provided herein:

(a) Affiliates of the Manager and the Management Company and their respective Members, directors, officers, shareholders and employees shall not be precluded from engaging directly or indirectly in any other business or other activity, including, but not limited to, exercising investment advisory and management responsibility and buying, selling, or otherwise dealing with Portfolio Investments for their own accounts, for the accounts of Affiliates of the Manager and the Management Company, and for the accounts of other funds;

(b) Affiliates of the Manager and the Management Company and their respective Members, directors, officers, shareholders and employees shall be permitted to perform, among other things, investment advisory and management services for accounts other than the Fund and in that connection to give advice and take action in

the performance of their duties to those accounts which may differ from the timing and nature of action taken with respect to the Fund;

(c) Affiliates of the Manager and the Management Company and their respective Members, directors, officers, shareholders and employees shall have no obligation to purchase or sell for the Fund any investment which Affiliates of the Manager or the Management Company may purchase or sell, or recommend for purchase or sale, for its or their own accounts, or for the account of any other fund or other Person;

(d) no Member shall, solely by reason of being a Member in the Fund, have any right to participate in any manner in any profits or income earned or derived by or accruing to the Manager, the Management Company, or any of their respective Affiliates or their respective Members, directors, officers, shareholders or employees from the conduct of any business or from any transaction in Portfolio Investments effected by the Manager, the Management Company any of their Affiliates or their respective Members, directors, officers, shareholders or employees for any account other than that of the Fund;

(e) in order to facilitate a Portfolio Investment, the Manager may cause the Fund to participate with one or more Persons (including, without limitation, strategic Members) in such Portfolio Investment;

(f) prior to the Investment Period Expiration Date, the Manager may establish one or more additional funds or other similar vehicles having terms substantially similar to those of the Fund (each a "Parallel Investment Vehicle"), including without limitation, any offshore or domestic vehicle, to facilitate the ability of certain types of investors to invest with the Fund. Subject to applicable legal, tax and regulatory considerations, any such Parallel Investment Vehicle will invest on a side-by-side basis with the Fund and on terms and conditions no more favorable to the Parallel Investment Vehicle than those available to the Fund, sharing (i) in each Portfolio Investment pro rata in proportion to the capital contributions with respect to each such entity and similarly sharing any related expenses, (ii) in Management Fees and Placement Fees (and similar fees with respect to such Parallel Investment Vehicle) pro rata as determined in a manner consistent with Section 5.6.2, and (iii) in Fund Expenses (and similar expenses with respect to such Parallel Investment Vehicle) pro rata in proportion to the capital contributions with respect to each such entity. Any Parallel Investment Vehicle shall be controlled by the Manager or an Affiliate thereof to the extent practicable in light of legal, tax and regulatory considerations. The Fund and any such Parallel Investment Vehicle(s) shall, subject to applicable legal, tax and regulatory considerations, (A) sell their respective interests in the same Portfolio Investment at the same time and on the same terms, pro rata based on their respective ownership interests in the applicable Portfolio Investment and (B) participate in any voting or consent rights under this Agreement relating to an investment in which they both have an interest as if the investors in the Parallel Investment Vehicle were Members under this Agreement.

5.4. **Valuation.** The determination of fair value (the "Fair Value") of any Portfolio Investment or of any other Fund Asset shall be made in good faith by the Manager on the advice of the Management Company from time to time (in no event less than annually) by considering all factors, information and data deemed by the Manager, in its sole judgment, to be pertinent, which factors, information and data may, but need not, include any of the following: purchase cost, estimates of liquidation value, liquidity of the Portfolio Investment, comparable properties, replacement costs, rental income, physical condition, and changes in the financial condition and prospects of the property, asset or interest. In determining the Fair Value of any Portfolio Investment or of any other Fund Asset, the Manager may obtain and may rely on information provided by any source or sources reasonably believed to be accurate in determining the value of property in accordance with the provisions of this Section 5.4.

5.5. **Manager's Liability; Indemnification.**

5.5.1. Neither the Manager nor its subsidiaries or Affiliates, nor the officers, members, directors, shareholders, employees, Members or agents of any of the foregoing shall be liable to the Fund or to a Member for any losses sustained or liabilities incurred as a result of any act or omission taken or suffered by the Manager or any such other Person unless the conduct of the Manager or such other Person constitutes Malfeasance.

5.5.2. The Manager shall not be liable to the Fund or any other Member for any action taken by any other Member, nor shall the Manager (in the absence of Malfeasance by the Manager) be liable to the Fund or any other Member for any action of any agent of the Fund selected and retained or supervised with reasonable care.

5.5.3. The Fund shall indemnify and hold harmless, and the other Members shall release, the Manager, its then current and any former Affiliates and subsidiaries, and all officers, directors, employees, partners, members, shareholders, attorneys, and agents of any of the foregoing (each, an "Indemnitee") to the fullest extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, reasonable expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts, of any nature whatever, known or unknown, liquid or illiquid (collectively, "Liabilities") arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative (collectively, "Actions"), in which the Indemnitee may be involved, or threatened to be involved as a party or otherwise, relating to the performance or nonperformance of any act concerning the activities of the Fund (including, specifically but without limitation on the generality of the foregoing, any act or omission of the Manager in its capacity as Partnership Representative or liquidating trustee of the Fund), if the Indemnitee's conduct did not constitute Malfeasance; provided that no indemnification shall be made under this Section 5.5 that (i) relates to disputes among the principals of the Manager, the Management Company, or Affiliates of the foregoing, or (ii) arises in connection with service to a former Portfolio Investment after the Fund disposes of its interest in its Portfolio Investment therein and relates to matters that occur after such disposition. The termination of an action, suit or proceeding by judgment, order, settlement, or upon a plea of *nolo contendere* or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in the precedent sentence. Notwithstanding the prior provisions of this Section 5.5.3, a Portfolio Investment shall have no rights to indemnity under this Section 5.5.3 even if

the Portfolio Investment is an Affiliate of the Fund, nor shall any Portfolio Investment be a third party beneficiary with respect to the indemnification provisions contained herein, provided that the Fund shall not be prohibited from providing indemnities to a Portfolio Investment.

5.5.4. In addition to Section 2.4.3, and subject to the limits set forth in this Section 5.5.4, the Manager may require the Members to make further Capital Contributions (whether or not the Fund has been dissolved) to satisfy all or any portion of the indemnification obligations of the Fund pursuant to this Section 5 in connection with any Liabilities arising from any and all Actions of which the Manager receives notice or otherwise becomes aware at any time during the term of the Fund. When required, each Member shall make Capital Contributions in respect of its share of any such indemnification required to be made in accordance with this Section 5.5.4, with each Member's share to be determined by reference to the Member's respective Capital Contribution amount. The Liability shall be allocated among the Members (including the Manager) in accordance with their relative Percentage Interests.

5.5.5. The Manager may, in its sole discretion, acquire on behalf of the Fund an insurance policy to insure against liabilities of the type indemnified against in Section 5.5.3. The cost of such policy shall be a Fund Expense. Each Indemnitee shall use its commercially reasonable efforts to pursue, before or concurrently while seeking indemnification, any insurance or indemnity claims it may have against third parties with respect to the expenses incurred in defending any claim, demand, action, suit or proceeding subject to this Section 5.5.

5.5.6. The provisions of this Section 5.5 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Person, except as otherwise provided in Section 5.5.7.

5.5.7. To the fullest extent permitted by law, the Manager is hereby authorized on behalf of the Fund to indemnify, hold harmless and release the Management Company and its respective agents, officers, employees, directors, shareholders and Affiliates to the same extent provided with respect to the Indemnitees in this Article 5.

5.5.8. To the extent that, at law or in equity, the Manager has duties (including fiduciary duties) and liabilities relating thereto to the Fund or to another Member, the Manager acting under this Agreement so long as such action does not constitute Malfeasance will not be liable to the Fund or to any such Member for its good faith reliance on the provisions of this Agreement.

5.5.9. The Manager may consult with legal counsel and accountants and any act or omission suffered or taken by the Manager on behalf of the Fund in furtherance of the interests of the Fund in good faith in reasonable reliance upon and in accordance with the advice of such counsel or accountants will be full justification for any such act or omission, and the Manager will be fully protected (and not liable to the Fund or any Member) in so

acting or omitting to act so long as the Manager used reasonable care in retaining such counsel or accountants.

5.5.10. The right of any Indemnitee to the indemnification provided in this Section 5.5 shall be cumulative of, and in addition to, any rights to which such Indemnitee may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Indemnitee's heirs, successors, assigns and legal representatives. Notwithstanding anything to the contrary in this Agreement, any amendment, repeal or modification of this Section 5.5 shall not adversely affect any right or protection of a Person who is or was an Indemnitee with respect to any acts or omissions of such Indemnitee occurring prior to such amendment, repeal or modification without such Person's prior written consent. The provisions of this Section 5.5 shall also apply to Persons who were Indemnitees prior to the amendment and restatement of this Agreement on the date hereof.

5.6. Fees and Expenses.

5.6.1. **Expenses.** The Management Company (or if none, the Manager) will bear and be charged with all Advisory Expenses. The costs and expenses of the Fund and (to the extent fairly allocable to the Fund) of the Manager which constitute Fund Expenses will be borne by and charged to the Fund.

5.6.2. **Manager Fees.** The Fund shall pay the Management Company the following amounts as Fund Expenses:

(a) **Management Fee.** The Fund shall pay the Management Fee quarterly in arrears on the last day of each fiscal quarter.

(b) **Placement Fee.** The Fund shall pay the Placement Fee upon each investment by the Fund in a Portfolio Investment.

ARTICLE 6.

INVESTMENT OBJECTIVES AND LIMITATIONS

6.1. **Objectives.** The Fund's investment objective shall be as set forth in the Memorandum.

6.2. **Investment Limitations.** The Manager or the Management Company shall not cause the Fund to exceed the Debt Ratio Limitation in the aggregate for all of the Fund's Portfolio Investments, provided that the Fund: (i) will not be required to reduce outstanding indebtedness levels because of reductions in the market value of one or more of its Portfolio Investments, and (ii) may

own or acquire a Portfolio Investment where the related indebtedness exceeds the Debt Ratio Limitation as long as the Fund's total indebtedness does not exceed such Debt Ratio Limitation;

ARTICLE 7.

BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS

7.1. **Books and Records.** The Manager shall cause to be kept, at the principal place of business of the Fund, or at such other location as the Manager shall reasonably deem appropriate (with notice thereof to the Members), full and proper ledgers, other books of account, and records of all receipts and disbursements, other financial activities, and the internal affairs of the Fund for at least the current and past four Fiscal Years. The books of the Fund shall be maintained, for financial reporting purposes, in accordance with accounting principles generally accepted in the United States, using fair value accounting methodology for private equity funds. Except as otherwise expressly set forth herein, all decisions as to accounting matters shall be made by the Manager in good faith and in its sole, but reasonable, judgment.

7.2. **Delivery of Records.** Subject to Sections 7.8 and 10.11, upon the written request of a Member for any purpose reasonably related to the Member's Membership Interest, the Manager shall deliver to such requesting Member (or, to the extent so directed, to its agent or attorney), at such requesting Member's cost and expense, a copy of the following information, to the extent such is requested: a copy of this Agreement, as amended, and copies of any Certificates, together with executed copies of any written powers of attorney pursuant to which this Agreement, as amended, and any Certificate have been executed.

7.3. **Inspection.** Members of the Fund may examine and copy the books and records of the Fund (including, for the avoidance of doubt, any books and records of the Management Company related to the Fund), and meet with the Fund's administrator upon reasonable written notice and at reasonable business hours. All inspections and audits conducted pursuant to this Section 7.3 shall be subject to the confidentiality provisions of Sections 7.8 and 10.11.

7.4. **Reports to the Members.**

(a) The Manager shall use best efforts to within 120 days after the end of each Fiscal Year commencing with the 2024 Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial information from any Portfolio Investment) send to each Person who was a Member at any time during such Fiscal Year annual audited financial statements of the Fund and an annual review providing annual financial information for, and a valuation of the Fund's investment in, each of the Portfolio Investments. Summary information on each Portfolio Investment will be provided following the end of the second and fourth quarters of each calendar year.

(b) Within 120 days after the end of each Fiscal Year, subject to reasonable delays in the event of the late receipt of any tax report from any Portfolio Investment, the Manager shall send to each Member a report that shall include all necessary information required by the Members for preparation of their federal, state and local income or franchise tax or information returns, including each Member's pro rata

share of Net Income, Net Loss and any other items of income, gain, loss and deduction for such Fiscal Year, including the information required to calculate the items set forth in Section 703 of the Code.

(c) The Manager shall send to each Member such other information as (i) the Manager shall be required to provide to the Members pursuant to applicable law (including, without limitation, the TBOC) in accordance with such law and (ii) a Member may reasonably request, provided that such information may be obtained by the Manager without undue expense.

(d) In the event that the Manager believes that the reports required by this Section 7.4 may be delayed due to the late receipt of Portfolio Investment information, the Manager shall so notify the Members.

7.5. **Meetings of Members.** The Manager will organize and convene at such virtual or actual site as the Manager shall select, an annual information meeting for the members of Fund at which the Manager and the Management Company will be present to review and discuss the Fund's activities and performance.

7.6. **Fund Tax Elections; Tax Controversies.** The Manager shall have the right in its sole and absolute discretion to make all elections for the Fund provided for in the Code, provided that the Manager shall not permit the Fund to elect and the Fund shall not elect to be treated as an association taxable as a corporation for U.S. federal, state or local income tax purposes. The Manager is hereby designated as the "partnership representative" within the meaning of Section 6223 of the Code and in such capacity shall represent the Fund in any disputes, controversies or proceedings with the Internal Revenue Service.

7.7. **Tax Representations of Flow-Through Entities.** Each Member that is a partnership (including, without limitation, a limited liability company or other entity treated as a Membership for United States federal income tax purposes), a grantor trust or an "S corporation" (within the meaning of Section 1361(a)(1) of the Code) (each, a "Flow-Through Entity") hereby represents and warrants to the Fund and the Manager that such Member did not acquire its Membership Interest for the principal purpose of allowing the Fund to have one hundred or fewer Members.

7.8. **Confidentiality of Investment Information.** The Manager shall have the right to keep confidential from the Members (and their respective agents and attorneys) for such period of time as the Manager deems reasonable, any information that the Manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Manager in good faith believes is not in the best interest of the Fund or any Portfolio Investment or could damage the Fund or such Portfolio Investment or their respective businesses or which the Fund or such Portfolio Investment is required by law or by agreement with a third party to keep confidential.

7.9. **Anti-Money Laundering Obligations.** Notwithstanding anything to the contrary contained in this Agreement, the Manager, in its own name and on behalf of the Fund, shall be authorized without the consent of any Person, including any other Member, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering

or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by in the Subscription Agreements.

ARTICLE 8.

MEMBERSHIP INTERESTS; TRANSFERS; ENCUMBRANCES OF MEMBERSHIP INTERESTS

8.1. **Member Transfers.** No Member or Assignee thereof may Transfer all or any portion of its Membership Interest (or beneficial interest therein), without the prior written consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion; provided that, subject to Section 8.4, a Member or Assignee thereof may Transfer all or any portion of its interest to an Affiliate of such Member or Assignee or to another Member, so long as the transferor remains liable for all obligations under this Agreement related to such Interest, unless otherwise agreed by the Manager.

8.2. **Manager Transfers and Change of Control.**

8.2.1. The Manager may not Transfer all or any portion of its Membership Interest, other than its right to receive distributions (and related allocations) pursuant to Sections 3.2, 3.6 and 9.4, without the consent of Majority in Interest of the Members, which such consent may be given or withheld, or made subject to such conditions as are determined by the Members, in the Members' sole and absolute discretion. In the event that the Manager assigns its entire Interest in the Fund in accordance with this Agreement, such transferee shall be admitted to the Fund as a Manager immediately prior to the Transfer upon execution of an instrument evidence its agreement to be bound by this Agreement and such transferee shall and is hereby authorized to continue the business of the Fund without dissolution.

8.2.2. The Manager shall promptly notify each Member in the event of any proposed Change of Control of the Manager.

8.3. **Encumbrances.** No Member or Assignee may create an Encumbrance with respect to all or any portion of its Membership Interest (or any beneficial interest therein) unless the Manager consents in writing thereto, which consent may be given or withheld, or made subject to such conditions as are determined by the Manager, in the Manager's sole and absolute discretion. Any purported Encumbrance which is not in accordance with this Agreement shall be null and void.

8.4. **Further Restrictions.** Notwithstanding any contrary provision in this Agreement, unless waived in writing by the Manager in its sole and absolute discretion, provided that the Manager shall not have the right to waive the requirements set forth in paragraphs (b), (c), (d), (e), (f) and (h) of this Section 8.4, any Transfer otherwise permitted shall be null and void if:

(a) such Transfer would cause a termination of the Fund for federal or state, if applicable, income tax purposes;

(b) such Transfer would, in the opinion of counsel to the Fund, cause the Fund to cease to be classified as a Membership for federal or state income tax purposes;

(c) such Transfer requires the registration of such Transferred Membership Interest pursuant to any applicable federal or state securities laws;

(d) such Transfer would cause the Fund to become a "publicly traded partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code;

(e) the transferee is not an "accredited investor," as that term is defined in Regulation D under the U.S. Securities Act of 1933, as amended (the "Securities Act");

(f) such Transfer involves Membership Interests being traded on an "established securities market" or a "secondary market or the substantial equivalent thereof" as those terms are defined in Treasury Regulations Section 1.7704-1 (in addition, such Transfers shall not be "recognized" (as that term is defined in Treasury Regulations Section 1.7704-1(d)(2)) by the Fund);

(g) such Transfer subjects the Fund, the Manager or the Management Company to regulation under the Investment Company Act, the Investment Advisers Act or ERISA;

(h) such Transfer results in a violation of applicable laws;

(i) such Transfer causes the revaluation or reassessment of the value of any Fund Asset resulting in any federal, state or local tax liability, unless the Transferor or Transferee undertakes to pay any resulting tax liability;

(j) such Transfer is made to any Person who lacks the legal right, power or capacity to own such Membership Interest; or

(k) the Fund does not receive written instruments (including, without limitation, a Subscription Agreement substantially in the form completed by the Assignee as of the date of this Agreement, copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as an Assignee) that are in a form satisfactory to the Manager (as determined in the Manager's sole and absolute discretion).

8.5. **Rights of Assignees.** Subject to Section 8.7, the transferee of any permitted Transfer pursuant to this Article 8 shall be an Assignee only, and only shall receive, to the extent Transferred, the distributions and allocations of income, gain, loss, deduction, credit, or similar item to which the Member which Transferred its Membership Interest would be entitled, and such Assignee shall not be entitled or enabled to exercise any other rights or powers of a Member, such other rights, and all obligations relating to, or in connection with, such Membership Interest (including, without limitation, the obligation to make Capital Contributions) remaining with the transferring Member. The transferring Member shall remain a Member (and shall have all of the obligations of a Member, including without limitation obligations to make Capital Contributions) even if it has Transferred its entire Membership Interest in the Fund to one or more Assignees until such time as the Assignee(s) is admitted to the Fund as a Member pursuant to Sections 8.6 and 8.7. In the event any Assignee desires to make a further assignment of any Membership Interest in the Fund, such Assignee shall be

subject to all of the provisions of this Agreement to the same extent and in the same manner as the Member that initially held such Membership Interest.

8.6. **Admissions, Withdrawals and Removals.** No Person shall be admitted to the Fund as a Member without the consent of the Manager. No Person shall be admitted to the Fund as an additional or substitute Manager except in accordance with Section 8.2. No Member shall be removed or entitled to withdraw from being a Member of the Fund except in accordance with Section 8.8. Except as otherwise provided in Section 9.2(c), no admission, withdrawal or removal of a Member shall, in and of itself, cause the dissolution of the Fund. Any purported admission, withdrawal or removal of a Member that is not in accordance with this Agreement shall be null and void.

8.7. **Admission of Assignees as Substitute Members.** Subject to Section 8.4, an Assignee shall become a Substitute Member only if and when each of the following conditions (to the extent applicable) is satisfied:

(a) if the Assignee is an Affiliate of the Member, the Manager consents in writing to such admission, which consent may be granted or withheld in the Manager's sole discretion;

(b) if the Assignee is not an Affiliate of the Member or another Member, the Manager consents in writing to such admission, which consent may be granted or withheld in the Manager's sole discretion;

(c) the Manager receives written instruments (including, without limitation, copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as a Substitute Member) and any opinions of counsel as requested by the Manager in its sole and discretion as to the opinions, if any, and the counsel that are in a form satisfactory to the Manager (as determined in its sole and absolute discretion); and

(d) the parties to the Transfer, or any one of them, pays all of the Fund's reasonable expenses in connection with such Transfer (including, but not limited to, the reasonable legal and accounting fees of the Fund)

8.8. **Withdrawal of Certain Members.** Members may withdraw from the Fund as provided in this Section 8.8:

(a) If a Member has Transferred all of its Membership Interest to one or more Assignees in accordance with this Article 8, then such Member shall withdraw from the Fund when all such Assignees have been admitted as Members in accordance with Section 8.2 or Section 8.7.

(b) Except as provided in Section 8.8(a), provided that a Class A Member has been invested in the Fund for a period of at least forty-eight (48) months, a Class A Member may voluntarily withdraw all or part of its interest in the Fund as of the close of business on the last day of each calendar month. A Class A Member desiring to withdraw all or part of its Class A Member Interest must give irrevocable written notice to the Manager at the principal office of the Fund at least thirty (30) days prior to the proposed withdrawal date (or within such other time as the Manager, in its

discretion, determines) indicating the amount to be withdrawn from such Member's Capital Account in such notice. The Manager may, in its sole discretion, waive the foregoing notice requirement. Withdrawals will be made on a "first in, first out" basis.

(c) The Manager, in its discretion, may effect withdrawal payments (i) in cash, (ii) by transfer to the Class A Member of certain portfolio Securities or other assets of the Fund, whether or not readily marketable, the fair market value of which would satisfy the Class A Member's request for withdrawal or (iii) in any combination of the foregoing. Except as provided in Sections 8.8(e) and 8.8(h), payment of at least ninety percent (90%) of the estimated amount due to a withdrawing Member must be made as soon as practicable (but not more than thirty (30) Business Days) after the effective date of withdrawal, *provided that* the Manager may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund. Any remaining balance must be paid, without interest thereon, promptly following completion of the audit or review of the Fund's financial statements for the Fiscal Year that includes the effective date of withdrawal.

(d) The Manager, in its discretion, may deduct from any withdrawal payments or otherwise charge to the withdrawing Class A Member a withdrawal charge reflecting the actual or estimated cost to the Fund of complying with and processing such withdrawal. The amount of any charges retained by the Fund in connection with any withdrawal, net of any actual costs and expenses of processing the withdrawal, is allocated among and credited to the Capital Accounts of the remaining Class A Members on the commencement of the Fiscal Quarter immediately following the effective date of the withdrawal pro rata according to the number of Class A Units held at such time (regardless of class).

(e) Upon receipt by the Manager of a Class A Member's notice of intention to withdraw assets from the Fund, the Manager may in its sole discretion manage the Fund's assets in a manner which would provide for cash being available to satisfy such Class A Member's request for withdrawal, but the Manager is under no obligation to effect sales of Fund assets if the Manager, in its discretion, determines that such transactions might be detrimental to the interest of the other Members or that such transactions are not reasonably practicable. The Manager is entitled to withdraw and pay to the Class B Members an amount equal to amounts of distributions to which the Class B Members otherwise would have been entitled through the effective date of withdrawal at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Class A Member.

(f) The Manager may, by not less than thirty (30) days' prior written notice (or not less than 5 days' prior written notice if the Manager determines in its discretion that such Class A Member's continued participation in the Fund may cause the Fund or the Manager to violate any applicable law), require any Class A Member's Interest to be withdrawn in part or in its entirety from the Fund and for the Class A Member to cease to be a Class A Member of the Fund (in the case of a withdrawal of a Class A Member's Interest in its entirety) pursuant to this Section 5.6. The amount due to any such Class A Member required to withdraw from the Fund shall be equal to the value of such Class A Member's Capital Account as of the effective date of the withdrawal

net of any deductions imposed pursuant to Sections 8.8(d) and 8.8(e). Settlements will be made in the same manner as voluntary withdrawals.

(g) The right of any Class A Member to withdraw or of any Class A Member to have distributed an amount from its Capital Account pursuant to the provisions of this Section 8.8 is subject to the provision by the Manager for all Fund liabilities and for reserves for contingencies provided for in the definition of “Available Cash” and the authorization for interim distributions to be payable solely from such amounts.

(h) The Manager may suspend or restrict the right of any Class A Member to withdraw capital from the Fund or to receive a distribution from the Fund pursuant to this Section 8.8 upon the occurrence of any event that may result in dissolution of the Fund or cause material adverse impact to the Fund. The material adverse effect to the Fund above shall be determined in the Manager’s discretion, provided however, that the effect of the withdrawal on the Fund’s operating expenses, including accounting and audit expenses, shall not be considered a material adverse effect. The Manager must promptly notify each Class A Member who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted of any suspension of withdrawal or distribution rights pursuant to this Section 8.8(h). The Manager, in its discretion, may allow any such Partners to rescind their withdrawal request to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. The Manager, in its discretion, may complete any withdrawals or distributions as of a date after the cause of any such suspension has ceased to exist to be specified by the Manager as the effective date of withdrawal for all purposes of this Section 8.8 or at any other time.

(i) A withdrawing Partner does not share in the income, gains and losses of the Fund or have any other rights as a Partner after the effective date of its withdrawal.

8.9. Conversion of Membership Interest. Upon the Incapacity of a Member (and the subsequent continuation of the business of the Fund pursuant to Section 9.2(c) if such Incapacity relates to the Manager), such Incapacitated Member automatically shall be converted to an Assignee only, and such Incapacitated Member (or its executor, administrator, trustee or receiver, as applicable) shall thereafter be deemed an Assignee for all purposes hereunder, with the same rights to allocations of Net Income, Net Loss and similar items and to distributions as was held by such Incapacitated Member prior to its Incapacity, but without any other rights of a Member.

8.10. Limitation on Participation. If at any time the Manager determines that there is a reasonable likelihood that, or a Member delivers to the Manager an opinion of counsel, reasonably acceptable to the Manager, to the effect that, the continuing participation in the Fund by any Member will have a Material Adverse Effect, such Member will, at the request of the Manager, use its best efforts to assign its entire Membership Interest (or such portion thereof as is sufficient, in the reasonable discretion of the Manager, to prevent or remedy such Material Adverse Effect) to any Person at a price acceptable to such Member, in a transaction which complies with Section 8.4 (provided that the admission of such Assignee as a Substitute Member shall remain subject to Section 8.7). The Manager agrees to provide any prospective transferee of such Membership Interest with

such reasonable access to the books and records of the Fund as the Manager reasonably determines is appropriate. If such Member has not assigned its entire Membership Interest (or such portion thereof as is sufficient, in the reasonable discretion of the Manager, to prevent or remedy such Material Adverse Effect) within 60 days, or within 5 days of the Manager having notified such Member that the Material Adverse Effect is described in clause (i) of the definition of Material Adverse Effect, the Manager shall have the right, but not the obligation, upon at least 15 days' prior written notice to such Member, to do, in its sole discretion, any or all of the following to prevent or remedy the Material Adverse Effect:

(a) offer to any Person, including each other Member, the opportunity to purchase all or a portion of such Member's Membership Interest at a cash price determined by an independent appraiser chosen by the Manager and approved (which approval shall not be unreasonably withheld) by the affected Member;

(b) liquidate all or any portion of such Member's Membership Interest or make a special distribution in respect of such Membership Interest to such Member in an amount equal to the amount such Member would receive (in the reasonable discretion of the Manager) if the Fund were to be dissolved and liquidated in accordance with Article 9 at such time, the Manager determining in its sole discretion whether to distribute cash or Securities or any combination of the foregoing; and/or

(c) dissolve the Fund, if none of the above actions is sufficient (in the reasonable discretion of the Manager) to prevent or remedy the Material Adverse Effect.

The details and documentation relating to any transaction or transactions set forth in this Section 8.10 shall be as determined by the Manager in its reasonable discretion, except as otherwise expressly provided. Upon the closing of any transaction or transactions contemplated by this Section 8.10, the Manager shall make such additional adjustments to the Percentage Interests and Capital Accounts of such Member and of all other Members as it shall reasonably deem to be appropriate and shall promptly notify in writing the Members of the adjustments made. All reasonable costs and expenses in respect of such determinations and other matters referred to in this Section 8.10 shall be borne by such Member.

ARTICLE 9.

DISSOLUTION; LIQUIDATION; TERMINATION OF THE FUND

9.1. **Limitations.** The Fund may be dissolved and have its affairs wound up only pursuant to the provisions of this Article 9, and the Members hereto do hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Fund or a sale or partition of any or all of the Fund Assets.

9.2. **Exclusive Causes.** The following and only the following events shall cause the Fund to be dissolved:

(a) the election of the Manager and the written consent of a Majority in Interest of the Class B Members;

(b) the date which is the fifth (5th) anniversary of the Investment Period Opening Date (the "Investment Period Expiration Date"), provided that the Manager may, in its sole discretion, extend the Investment Period Expiration Date in its sole discretion by providing written notice to the Members of its election to exercise such option no less than sixty (60) days prior to such Investment Period Expiration Date;

(c) the Incapacity of the Manager or any other event that causes the Manager to cease to be a Manager under the TBOC, provided that the Fund shall not be dissolved or required to be wound up in connection with any of the events specified in this Section 9.2(c) if (i) at the time of the occurrence of such event there is at least one other Manager who is hereby authorized to, and elects to, carry on the business of the Fund, or (ii) a Majority in Interest of the Class B Members (or such greater percentage as is required by the TBOC) votes to continue the business of the Fund within ninety (90) days following the occurrence of any such Incapacity or removal;

(d) any time following expiration of the Investment Period at which all of the assets of the Fund have been converted into cash, unless the Manager shall have given notice to the Members of its intention to effect one or more Portfolio Investments permitted by Section 5.1.4;

(e) judicial dissolution; or

(f) if, at any time, there are no Members, unless the Fund is continued in accordance with the provisions of the TBOC.

9.3. **Effect of Dissolution.** The dissolution of the Fund shall be effective on the day on which the event occurs giving rise to the dissolution, but the Fund shall not terminate until it has been wound up and its assets have been distributed as provided in Section 9.4 of this Agreement and its Certificate of Formation cancelled in accordance with the TBOC. Notwithstanding the dissolution of the Fund, prior to the termination of the Fund, the business of the Fund and the affairs of the Members, as such, shall continue to be governed by this Agreement.

9.4. **Liquidation and Final Distribution Proceeds.** Upon the dissolution of the Fund pursuant to Section 9.2, the Fund shall thereafter engage in no further business other than that which is necessary to wind up the business, and the Manager or, in the case of dissolution pursuant to Section 9.2(c), a liquidating trustee appointed by a Majority in Interest of the Members, after the establishment of appropriate reserves, shall liquidate all Fund Assets and distribute the cash proceeds therefrom. A reasonable time shall be allowed for the winding up of the affairs of the Fund in order to minimize any losses attendant upon such a winding up. The liquidator shall use commercially reasonable efforts to dispose of or distribute all Fund Assets within eighteen (18) months of dissolution, but shall not be bound to do so or be liable in any way for failure to do so. In the event the liquidator reasonably believes that it is prudent to do so, cash or other assets held in reserve may be placed in a liquidating trust or other escrow immediately prior to the termination of the Fund in order to ensure that any and all obligations of the Fund are satisfied. The cash proceeds from the liquidation of Fund Assets shall

be applied or distributed by the Fund in the following order and otherwise in accordance with TBOC Chapter 11:

(a) first, to the creditors of the Fund (including, without limitation, the Management Company and any Members that are creditors to the extent permitted by law, which shall include the Manager to the extent it is owed any fees, reimbursements or payments, including, without limitation, pursuant to Section 5.6), in satisfaction of liabilities of the Fund other than liabilities for distributions to Members pursuant to Section 101.207 of the TBOC, and as reasonable reserves therefor;

(b) second, to Members and former Members in satisfaction of liabilities, if any, for distributions pursuant to Section 101.207 of the TBOC, and as reasonable reserves therefor; and

(c) third, to the Members in accordance with their respective Capital Account balances and otherwise in accordance with Section 3.2, after first having made the allocations required by Section 4.1.2, and any other allocations required by Article 4 at such time.

Notwithstanding the foregoing, in the event that the Manager (or such liquidating trustee) determines that an immediate sale of all or any portion of Fund Assets would cause undue loss to the Members, the Manager (or such liquidating trustee), in order to avoid such loss to the extent not then prohibited by the TBOC, may either defer liquidation of and withhold from distribution for a reasonable time the Fund Assets except those necessary to satisfy the Fund's debts and obligations, or distribute such Securities, other beneficial interests in real estate or other Fund Assets to the Members in kind, the Manager shall give advance written notice of any such in-kind distribution and, if, after receiving such notice a Member shall determine that there is a reasonable likelihood that any such distribution in kind would cause such Member to be in violation of any applicable law, regulation or order, such Member shall give written notice thereof to the Manager within five (5) Business Days following its receipt of the Manager's notice of distribution, and the Member and the Manager (or such liquidating trustee) shall each use its best efforts to make alternative arrangements for the sale or transfer into an escrow account of any such distribution on mutually agreeable terms.

9.5. **Restoration of Deficit Capital Account Balance.** No Member shall have any obligation to make any Capital Contribution with respect to any deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which the liquidation occurs), and such deficit shall not be considered a debt owed to the Fund or to any other Person for any purpose whatsoever.

ARTICLE 10.

MISCELLANEOUS

10.1. **Fund Counsel.** The Fund and the Manager are not represented by separate counsel. The attorneys, accountants and other experts who perform services for the Fund may also perform services for the Manager. It is contemplated that any such dual representation may continue. The Fund has initially selected Grable Martin PLLC ("Fund Counsel") as legal counsel to the Fund. Each Member acknowledges that Fund Counsel does not represent any Member in its capacity as such in

the absence of a clear and explicit written agreement to such effect between such Member and Fund Counsel (and then only to the extent specifically set forth in such agreement), and that in the absence of any such agreement Fund Counsel shall owe no duties to any Member. Each Member further acknowledges that, whether or not Fund Counsel has in the past represented or is currently representing such Member with respect to other matters, Fund Counsel has not represented the interests of any Member in the preparation and/or negotiation of this Agreement.

10.2. **Appointment of Manager as Attorney-in-Fact.**

10.2.1. Each Member, including each Additional Member, by its execution of this Agreement, irrevocably constitutes and appoints the Manager as its true and lawful attorney-in-fact with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement:

(a) All Certificates and other instruments, and all amendments thereto, which the Manager deems appropriate to form, qualify, continue or otherwise operate the Fund as a membership (or other entity in which the Members will have limited liability comparable to that provided in the TBOC) in accordance with this Agreement, in the State of Texas and the jurisdictions in which the Fund may conduct business or in which such formation, qualification or continuation is, in the opinion of the Manager, necessary or desirable to protect the limited liability of the Members.

(b) All amendments to this Agreement adopted in accordance with the terms hereof, and all instruments which the Manager deems appropriate to reflect a change or modification of the Fund in accordance with the terms of this Agreement.

(c) All conveyances of Fund Assets, and other instruments which the Manager reasonably deems necessary in order to complete a dissolution and termination of the Fund pursuant to this Agreement.

10.2.2. The appointment by all Members of the Manager as attorney-in-fact shall be deemed to be a power coupled with an interest, in recognition of the fact that each of the Members under this Agreement will be relying upon the power of the Manager to act as contemplated by this Agreement in any filing and other action by it on behalf of the Fund, shall survive the disability or Incapacity of any Person hereby giving such power, and the transfer or assignment of all or any portion of the Membership Interest of such Person in the Fund, and shall not be affected by the subsequent Incapacity of the principal; provided, however, that in the event of the assignment by a Member of all of its Membership Interest in the Fund, the foregoing power of attorney of an assignor Member shall survive such assignment; and provided further, however, that if such Assignee is admitted as a Substitute Member pursuant to this Agreement, the foregoing power of attorney shall survive with respect to the transferring Member only to the extent of, and for the purpose of, enabling the

Manager to execute, acknowledge, swear to and file any instruments necessary to effect the substitution of the Assignee as a Substitute Member.

10.3. Addition of Members; Amendments.

10.3.1. Each additional Member shall become a signatory hereto by signing such number of counterpart signature pages to this Agreement (by execution of the Subscription Agreement), a power of attorney to the Manager, and such other instruments, in such manner, as the Manager shall determine. By so signing, each additional Member shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

10.3.2. In addition to amendments specifically authorized herein, any and all amendments to this Agreement may be made from time to time by the Manager with the consent of a Supermajority in Interest of the Members, provided that:

(a) the Manager shall simultaneously deliver to each Member copies of all proposed amendments and requests for consents or approval prior to the effective date of any such amendment, consent or approval;

(b) without the consent of each of the Members to be adversely affected, this Agreement may not be amended (including through a merger with or into another Person that does not contain similar provisions) so as to:

(i) modify the limited liability of a Member,

(ii) adversely affect the interest of a Member in Net Income, Net Loss or distributions (other than to reflect the admission of an Additional Member or the increase in Capital Contributions of an Increasing Member),

(iii) increase such Member's Capital Contributions (other than to reflect the admission of an Additional Member or the increase in Capital Contribution of an Increasing Member),

(iv) amend the provisions of Sections 1.4, 3.6 or this Section 10.3.2,

(v) merge the Fund with or into any other Person, or

(vi) restrict the transferability of any Member's Membership Interest except as expressly provided in this Agreement as of the date hereof;

(c) without the consent of Supermajority in Interest of the Members, this Agreement may not be amended to extend the term of the Fund, except as provided in Section 9.2(b); and

(d) any provision requiring the vote or consent of greater than a Majority in Interest of the Members (including, without limitation, provisions requiring a Supermajority in Interest of the Members) shall require the same level of consent to be amended.

10.3.3. In addition to other amendments authorized herein, amendments may be made to this Agreement from time to time by the Manager, without the consent of any other Member: (a) to delete or add any provision of this Agreement required to be so deleted or added by any federal or state official, which addition or deletion is deemed by such official to be for the benefit or protection of all of the Members; (b) to take such actions as may be necessary (if any) to ensure that the Fund will be treated as a Membership for federal income tax purposes; (c) to amend this Agreement to reflect the admission of any Additional Member or the increase of Capital Contributions by any Increasing Member; and (d) to reflect the admission of any Additional Member or the increase in Capital Contributions by any Increasing Member on the List of Fund Members.

10.3.4. In making any amendments, there shall be prepared and filed by, or for, the Manager such documents and certificates as may be required under the TBOC and under the laws of any other jurisdiction applicable to the Fund.

10.3.5. Notwithstanding all the provisions of this Agreement except for those provisions provided in Section 10.3.2, or the provisions of any Subscription Agreement, it is hereby acknowledged and agreed that the Manager, on its own behalf or on behalf of the Fund, or the Management Company, without the approval of any Member or any other Person, may enter into (a) certain side letters or other supplemental agreements with one or more Members or members in the Offshore Feeder or any Parallel Investment Vehicle(s) (each a "Side Letter Grantee") which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement, any contract establishing or governing the management of any Parallel Investment Vehicle (a "Parallel Investment Vehicle Agreement"), and/or any subscription agreement relating to any of the foregoing entities or (b) any Parallel Investment Vehicle Agreement which amends or waives certain terms of this Agreement or any Parallel Investment Vehicle Agreement(s) as they apply to such Side Letter Grantee (each such side letter, agreement or contract entered into by the Manager pursuant to this Section 10.3.5, shall hereinafter be referred to as a "Side Letter"). The parties hereto agree that any terms contained in a Side Letter to or with a Side Letter Grantee shall govern with respect to such Side Letter Grantee notwithstanding the provisions of this Agreement or of any Subscription Agreement. No Member or member or investor in any Parallel Investment Vehicle(s), solely by reason of this Section 10.3.5, shall be entitled to receive any rights or benefits established in favor of (A) any employee or Affiliate of the Manager or (B) any other Side Letter Grantee by reason of the fact that such Side Letter Grantee is subject to any laws, rules or regulations to which such Member or member or investor in any Parallel Investment Vehicle(s) is not also subject.

10.4. **Accounting and Fiscal Year.** Subject to Code Section 448, the books of the Fund shall be kept on such method of accounting for tax and financial reporting purposes as may be determined by the Manager. The fiscal year of the Fund (the "Fiscal Year") shall be the calendar year, unless otherwise determined by the Manager and permitted under the Code.

10.5. **Entire Agreement.** This Agreement, the Subscription Agreements and each Side Letter hereto constitutes the entire agreement between the parties hereto pertaining to the subject

matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof.

10.6. **Further Assurances.** Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

10.7. **Notices.** Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (a) delivered personally to the Person or to an officer of the Person to whom the same is directed, or (b) sent by facsimile, e-mail, overnight mail or registered or certified mail, return receipt requested, postage prepaid, addressed as follows: if to the Fund, to the Fund at the address set forth in Section 1.3 hereof, or to such other address as the Fund may from time to time specify by notice to the Members; if to a Member, to such Member at the address set forth in the List of Fund Members, or to such other address as such Member may from time to time specify by notice to the Fund. Any such notice shall be deemed to be delivered, given and received for all purposes (the "Effective Date") as of: (i) the date so delivered, if delivered personally, (ii) upon receipt, if sent by facsimile, or (iii) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed.

10.8. **Governing Law; Venue and Jurisdictions.** This Agreement, including its existence, validity, construction, and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Texas without regard to otherwise governing principles of conflicts of law. Notwithstanding the provisions of Section 10.16, exclusive jurisdiction and venue for disputes between the parties hereto shall lie in the courts located in Dallas, Texas.

10.9. **Binding Effect.** Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and all other Persons hereafter holding, having or receiving an interest in the Fund, whether as Assignees, Substitute Members or otherwise.

10.10. **Severability.** In the event that any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void, unenforceable or inoperative as a matter of law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of this Agreement as a whole.

10.11. **Confidentiality.**

(a) Each party hereto agrees that (i) the provisions of this Agreement, all understandings, agreements and other arrangements between and among the parties, and all other non-public information received from, or otherwise relating to, the Fund, any Member, or any Portfolio Investment shall be confidential and shall be used by a Member solely for purposes of making or monitoring its investment in the Fund, and (ii) it shall use its best efforts not to disclose or otherwise release to any other Person

(other than another party hereto or a Member's owners, beneficiaries, Members, officers, agents, board members, attorneys, asset consultants, advisers, custodians or employees on a need-to-know basis, which Persons shall be bound by this Section 10.11 as if they were a Member) such matters, without the written consent of the Manager. The obligations of the parties hereunder shall not apply: (i) to information already known to the general public at the time of disclosure or which becomes known through no act of such Member, (ii) to any party to the extent that the disclosure by such party of information otherwise determined to be confidential is required by applicable law or by legal process or by any federal, state or local regulatory body with jurisdiction over such party or (iii) to disclosure made in connection with any lawsuit initiated to enforce any rights granted under this Agreement, provided that, prior to disclosing such confidential information, a party shall, to the extent practicable and permitted by applicable law, notify the Fund thereof, which notice shall include the basis upon which such party believes the information is required to be disclosed.

(b) Notwithstanding any other provision of this Agreement to the contrary, the parties to this Agreement (and each employee, representative, or other agent of that person) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Fund and the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the recipient to the extent they relate to such tax treatment and tax structure.

(c) With the prior consent of the Manager, such consent to not be unreasonably withheld, Members may disclose information to potential Assignees for the purposes of facilitating the transfer of their Membership interest provided that, prior to such disclosure, (i) such potential Assignees have agreed in writing to be bound by confidentiality provisions with respect to such information no less restrictive than the provisions of this Section 10.11, and (ii) the Fund is named as a third party beneficiary with respect to such confidentiality provisions.

(d) The Manager will use best efforts to insure that all information provided by Members (including the identity of the Member and any underlying beneficial owners) remains confidential, even if any of these entities is required to disclose any such information to proper authorities by law.

10.12. **Counterparts.** This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto. Members purchasing Class A Units shall executed this Agreement by execution of the Subscription Agreement.

10.13. **Waivers.** No waiver by any Member of any default with respect to any provision, condition or requirement hereof shall be deemed to be a waiver of any other provision, condition or requirement hereof; nor shall any delay or omission of any Member to exercise any right hereunder in any manner impair the exercise of any such right accruing to it hereafter.

10.14. **Preservation of Intent.** If any provision of this Agreement is determined by an arbitrator or any court having jurisdiction to be illegal or in conflict with any laws of any state or

jurisdiction, then the Members agree that such provision shall be modified to the extent legally possible so that the intent of this Agreement may be legally carried out. If any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect or for any reason, then the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all of the Members' rights and privileges shall be enforceable to the fullest extent permitted by law.

10.15. **Certain Rules of Construction.** All Article or Section titles or other captions in this Agreement are for convenience only, and they shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Unless the context otherwise requires: (a) a term has the meaning assigned to it; (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles; (c) "or" is not exclusive; (d) words in the singular include the plural, and words in the plural include the singular; (e) provisions apply to successive events and transactions; (f) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (g) all references to "clauses," "Sections" or "Articles" refer to clauses, Sections or Articles of this Agreement; and (h) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms.

10.16. **Arbitration.** The Members shall attempt in good faith to resolve any controversy, dispute or claim arising out of or in connection with this Agreement, or the breach, termination or validity hereof. If such matter cannot be so resolved within a reasonable period of time, it shall be settled by final and binding arbitration to be conducted by an arbitration tribunal in Dallas, Texas, pursuant to the rules and procedures, and before an arbitrator agreed upon by the parties, or if no agreement can be reached, pursuant to the rules of the American Arbitration Association. If no agreement regarding the arbitrator and procedures can be reached, the following provisions shall govern the arbitration. The arbitration tribunal shall consist of three (3) arbitrators. The party initiating arbitration shall nominate one arbitrator in the request for arbitration and the other party shall nominate a second in the answer thereto within thirty (30) days of receipt of the request. The two arbitrators so named will then jointly appoint the third arbitrator. If the answering party fails to nominate its arbitrator within the thirty (30)-day period, or if the arbitrators named by the parties fail to agree on the third arbitrator within sixty (60) days, the office of the American Arbitration Association in Dallas, Texas shall make the necessary appointments of such arbitrator(s). The decision or award of the arbitration tribunal (by a majority determination, or if there is no majority, then by the determination of the third arbitrator, if any) shall be final, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by the aforesaid rules, the procedural law of the State of Texas shall govern.

10.17. **Tax Disclosure.** The Manager shall use reasonable best efforts to ensure that no limitation is placed on the Members' ability to disclose the tax treatment and tax structure of any transaction entered into by the Fund.

10.18. **Limitation of Liability of Service Provider.** Under Section 33.N of the Texas Securities Act, the maximum amount that may be recovered against a Person who has been engaged to provide services relating to an offer or sale of securities of a "small business issuer" (as such term is defined in Section 33.N(1)), including an attorney, an accountant, a consultant, or the firm of the

attorney, accountant, or consultant in any action or series of actions under Section 33 relating to an offer of securities made by a small business issuer is an amount equal to three times (3X) the fee paid by the issuer or other seller to the Person for the services related to the offer of securities, unless the trier of fact finds the Person engaged in intentional wrongdoing in providing the services. The parties hereto agree and acknowledge that they have been provided the foregoing disclosure regarding the limitations on a service provider's liability pursuant to Section 33.N of the Texas Securities Act.

ARTICLE 11.

DEFINITIONS

As used herein, the following terms have the meanings set forth below:

"Actions" has the meaning specified in Section 5.5.3.

"Additional Member" means any Person initially admitted to the Fund as a Member on or after Initial Closing pursuant to Section 2.6.

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

(a) any amounts that such Member is obligated to restore pursuant to this Agreement or is deemed to be obligated to restore pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c) or pursuant to the penultimate sentence of either of Treasury Regulations Sections 1.704-2(i)(5) or 1.704-2(g)(1) shall be treated as added back to the Member's Capital Account for the purpose of computing such deficit, and shall reduce the Adjusted Capital Account Deficit; and

(b) the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) shall be treated as reducing the Member's Capital Account for the purpose of computing such deficit, and shall increase the Adjusted Capital Account Deficit.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Advisory Expenses" means all normal overhead expenses of the Management Company and the Manager in connection with identifying, evaluating and arranging the acquisition, management or disposition of Portfolio Investments, including, without limitation, salaries and benefits, rent, office furniture, fixtures and computer equipment, but excluding the costs and expenses (including travel, consultants' fees and other fees and any other directly allocable out-of-pocket expense of any kind, not otherwise reimbursed by a Portfolio Investment) incurred in identifying, evaluating and arranging any transaction contemplated for investment by the Fund (regardless of whether such transaction is subsequently consummated) or in holding or selling Portfolio Investments.

"Affected Members" has the meaning specified in Section 3.5.2.

"Affiliate" means, with respect to a specified Person, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with or has been appointed as custodian by, the specified Person.

"Agreement" has the meaning specified in the Preamble, as amended from time to time.

"Assignee" means any Person to which a Member or another assignee has Transferred its Membership Interest in accordance with Article 8.

"Available Cash" means all cash available for distribution by the Fund, in excess of amounts retained by the Fund (as determined in the good faith discretion of the Manager) to: (i) pay offering and operating expenses, (ii) pay Fund Expenses, (iii) fund reserves (including, without limitation, reserves required for new Portfolio Investments or renovations to existing Portfolio Investments, and other capital expenditures, working capital, expenses or other liabilities or contingencies of the Fund as determined in the sole discretion of the Manager), (iv) fund anticipated payments on indebtedness of the Fund, and (v) pay any required tax withholdings, subject to the requirements as to Tax Liability Distributions in Section 3.3.

"Business Day" means any day when banks are generally open for the conduct of banking business in Dallas, Texas.

"Board of Managers" shall mean all of the Managers together acting as the management body of the Fund.

"Capital Account" means the Capital Account maintained for each Member on the Fund's books and records in accordance with the following provisions:

(c) To each Member's Capital Account there shall be added (i) such Member's Capital Contributions, (ii) such Member's allocable share of Net Income and any items in the nature of income or gain that are specially allocated to such Member pursuant to Article 4 or other provisions of this Agreement, and (iii) the amount of any Fund liabilities assumed by such Member or which are secured by any property distributed to such Member.

(d) From each Member's Capital Account there shall be subtracted (i) the amount of cash and the Gross Asset Value of any Fund Assets (other than cash) distributed to such Member pursuant to any provision of this Agreement (for the avoidance of doubt, excluding any payment of principal and/or interest to such Member pursuant to the terms of a loan made by the Member to the Fund), (ii) such Member's allocable share of Net Losses and any other items in the nature of deductions, expenses or losses that are specially allocated to such Member pursuant to Article 4 or other provisions of this Agreement, and (iii) liabilities of such Member assumed by the Fund or which are secured by any property contributed by such Member to the Fund.

(e) In the event any Membership Interest in the Fund is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the

Capital Account of the transferor to the extent it relates to the Transferred Membership Interest.

(f) In determining the amount of any liability for purposes of clauses (a) and (b) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Treasury Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event that the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any additions or subtractions thereto, are computed in order to comply with such Treasury Regulations, the Manager may make such modification. The Manager shall also make (i) any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Fund capital reflected on the Fund's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

"Capital Contribution" means, with respect to any Member at any time, the aggregate amount of cash and the initial Gross Asset Value of any property (other than cash) contributed to the Fund by such Member as of such time, provided that, the Fund shall not accept any Capital Contributions in any form other than cash without the consent of the Manager, which consent may be granted or withheld in the Manager's sole discretion.

"Certificate" means any and all certificates of formation, amendments thereto, a certificate of cancellation and a certificate of merger or consolidation and any restatement of the foregoing, which are filed on behalf of, or with respect to, the Fund in the office of the Secretary of State of the State of Texas.

The "Chairman" of the Board of Managers shall be one of the members of the Board of Managers elected from among them who shall chair all meetings of the Board of Managers. In the event there is a single Manager, the Chairman shall be the sole Manager.

"Change of Control" means with respect to the Manager the completion of (i) a transaction or series of related transactions as a result of which the members of the Manager would transfer 25% or more of their aggregate interests in the Manager or in the entity that controls, directly or indirectly, the Manager immediately after such transaction; provided that (y) an internal reorganization that does not change the ultimate control of the Manager shall not constitute a Change of Control, and (z) the Manager's pledge of its Membership Interest in connection with the transactions contemplated under the Credit Agreement shall not constitute a Change of Control, or (ii) a grant of rights by the Manager to any Person (or the issuance of a consent by the Manager to any Person granted such rights to transfer such rights) to receive amounts distributed to the Manager pursuant to Section 3.2 (such amounts, "Carried Interest Distributions"), which results in one or more Persons who are not Affiliated Carried Interest Holders having the right to receive, in the aggregate, more than 25% of the Carried Interest Distributions.

"Class A Member" shall mean a Member of the Fund holding Class A Units whether Class A-1 Units or Class A-2 Units.

"Class A-1 Member" shall mean a Member of the Fund holding Class A-1 Units.

"Class A-2 Member" shall mean a Member of the Fund holding Class A-2 Units.

"Class A-1 Portion" shall equal Available Cash for distribution under Section 3.2.2 multiplied by the total Capital Contributions of the Class A-1 Members divided by the total Capital Contributions of all the Class A Members (regardless of subclass).

"Class A-2 Portion" shall equal Available Cash for distribution under Section 3.2.2 multiplied by the total Capital Contributions of the Class A-2 Members divided by the total Capital Contributions of all the Class A Members (regardless of subclass).

"Class A Unit" shall mean a Unit of the Fund's Membership Interests held by a Class A Member having the rights and preferences as set forth herein. The Class A Units shall be divided into subclasses comprising Class A-1 Units and Class A-2 Units.

"Class A-1 Unit" shall mean a Class A-1 Membership Interest Unit having the rights and preferences as set forth herein.

"Class A-2 Unit" shall mean a Class A-2 Membership Interest Unit having the rights and preferences as set forth herein.

"Class B Member" shall mean the Performance Members, its assignees and transferees.

"Class B Unit" shall mean a Unit of the Fund's Membership Interests held by a Class B Member.

"Code" means the Internal Revenue Code of 1986, as previously or hereafter amended.

"Credit Agreement" means any loan or borrowing agreement of the Fund.

"Debt Ratio Limitation" means the restriction by which the Fund and any other investment vehicle that owns Portfolio Investments (if any) will not assume or incur debt if, as a result thereof, its aggregate indebtedness (excluding Temporary Debt) will not exceed the greater of Seventy-Five Percent (75%) of the (a) aggregate Capital Contributions of the Fund or (b) the Invested Capital.

"Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year bears to such beginning adjusted tax basis; and, provided, further, that if such beginning adjusted tax basis is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

"Effective Date" has the meaning specified in Section 10.7.

"Encumbrance" means, a pledge, alienation, mortgage, hypothecation, encumbrance or similar collateral assignment by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings).

"ERISA" means Title I of the U.S. Employee Retirement Income Security Act of 1974, as previously or hereafter amended.

"Fair Value" has the meaning specified in Section 5.4.

"Final Closing" means the last Subsequent Closing of the Fund held no later than the close of the Investment Period.

"Fiscal Year" has the meaning specified in Section 10.4.

"Flow-Through Entity" has the meaning specified in Section 7.7.

"Follow-on Investments" has the meaning specified in Section 5.1.4.

"Follow-up Investments" has the meaning specified in Section 5.1.4.

"Fully Invested" has the meaning specified in Section 5.3.1(a).

"Fund" means SSG Recreation Fund 01, LLC, a Texas limited liability company.

"Fund Assets" means all direct and indirect interests in real and personal property owned by the Fund from time to time, and shall include both tangible and intangible property (including cash and including the Fund's rights to receive Capital Contributions hereunder).

"Fund Counsel" has the meaning specified in Section 10.1.

"Fund Expenses" means all costs and expenses relating to the operations of the Fund, and any other investment vehicles created for the purpose of investing directly or indirectly in Portfolio Investments, including, without limitation, (i) legal, auditing, consulting and accounting expenses; (ii) costs associated with the preparation and delivery of reports, financial statements, tax returns and Schedule K-1s to Members; (iii) expenses of meetings of the Fund; (iv) all expenses associated with the acquisition, holding and disposition of actual and potential investments (including without limitation due diligence and any travel associated therewith and all reasonable costs and expenses associated with property management of Portfolio Investments); (v) all extraordinary expenses (such as litigation); (vi) all indemnification and insurance expenses; (vii) interest on and fees and expenses arising out of all permitted borrowings of the Fund; (viii) all expenses relating to unconsummated transactions; (ix) all expenses of liquidating the Fund; (x) any taxes, fees or other governmental charges levied against the Fund (but not including any taxes to be paid by any Member individually) and all expenses incurred in connection with any tax audit, investigation, settlement or review of the Fund; (xi) the Management Fees; (xii) the Placement Fee; and (xiii) all Organizational Expenses.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Fund shall be the gross Fair Value of such asset on the date of contribution, as determined under Section 5.4.

(b) The Gross Asset Values of all Fund Assets immediately prior to the occurrence of any event described in subsections (i) through (iv) hereof shall be adjusted to equal their respective gross Fair Values, as determined under Section 5.4, as of the following times:

(i) the acquisition of an interest in the Fund by a new or existing Member in exchange for more than a *de minimis* Capital Contribution, if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Fund;

(ii) the distribution by the Fund to a Member of more than a *de minimis* amount of Fund Assets as consideration for an interest in the Fund, if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Fund;

(iii) the issuance of an interest in the Fund (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Fund, if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Fund;

(iv) the liquidation of the Fund within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and

(v) at such other times as the Manager shall reasonably determine necessary or advisable in order to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Fund Asset distributed to a Member shall be the gross Fair Value of such asset on the date of distribution as determined under Section 5.4.

(d) The Gross Asset Values of Fund Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (d) to the extent that the Manager reasonably determines that an adjustment pursuant to clause (b) is necessary

or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

(e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses (and not the depreciation, amortization or other cost recovery deductions allowable with respect to that asset for federal income tax purposes).

"Incapacity" means with respect to any Person the entry of an order of incompetence or of insanity, or the death, dissolution, bankruptcy or termination (other than by merger or consolidation) of any Person. The term "incapacitated" shall have a correlative meaning.

"Increasing Member" has the meaning specified in Section 2.6.

"Indemnitee" has the meanings specified in Section 5.5.3.

"Initial Closing" has the meaning specified in Section 2.4.2.

"Interest" means a Member's Membership Interest in the Fund, represented by the Class A Units or Class B Units held by the Member.

"Interest Calculation Period" has the meaning specified in Section 2.7(b)(ii).

"Invested Capital" means, as of the date of determination, (a) the aggregate amount invested in Portfolio Investments held by the Fund or other investment vehicle substantially owned by the Fund at such date; plus (b) any Capital Contributions made to pay Fund Expenses incurred by the Fund; plus (c) any retained earnings owned by the Fund or other investment vehicle substantially owned by the Fund.

"Investment Advisers Act" means the U.S. Investment Advisers Act of 1940, as previously or hereafter amended.

"Investment Company Act" means the U.S. Investment Company Act of 1940, as previously or hereafter amended.

"Investment Management Agreement" has the meaning specified in Section 5.1.2(h).

"Investment Objective" means the investment objective of the Fund as set forth in Schedule 6.1 hereto.

"Investment Percentage Interest" means, with respect to a particular Portfolio Investment and Member, the percentage which corresponds to the ratio which such Member's Capital Contribution made in respect of such Portfolio Investment bears to the Capital Contributions of all Members in respect of such Portfolio Investment.

“Investment Period” shall mean the period of time commencing on the Investment Period Open Date and concluding on the fifth (5th) anniversary thereof; provided however, that the Investment period may be extended in the sole discretion of the Manager.

“Investment Period Expiration Date” means the date on which the Investment Period concludes.

“Investment Period Open Date” shall mean the date on which the Initial Closing shall occur.

“Lenders” shall mean the Person extending credit to the Fund under any Credit Agreement.

“Liabilities” has the meaning specified in Section 5.5.3.

“LIBOR” means the London Interbank Offered Rate, calculated as of the applicable date.

“Member” means any Person designated as a Member on the List of Fund Members in its capacity as a member, including any Person who has been admitted to the Fund as a Substitute Member or Additional Member in accordance with the terms set forth herein (except where otherwise expressly provided otherwise herein). A Member may be a Class A Member or Class B Member.

“List of Fund Members” means the list of Members of the Fund maintained by the Manager in the books and records of the Fund.

“Majority in Interest of the Members” means at any time Members (or any specified subset thereof) holding more than fifty percent (50%) of the Percentage Interests held, in the aggregate, by all Members (or of such specified subset).

“Malfeasance” means, with respect to any Person, any act or omission occurring during the term of the Fund as finally determined by any court, arbitrator or governmental body of competent jurisdiction to be: (a) violations of federal or state securities laws, (b) any intentional criminal wrongdoing, or (c) conduct that constitutes fraud, willful misconduct or gross negligence.

“Management Company” means the Manager or any Person that may be designated the Management Company from time to time by the Manager pursuant to Section 5.1.2(h) and to which the Fund shall pay the Management Fee and Placement Fee. In the absence of a designation to the contrary, the Manager shall be the Management Company and all references herein to the Management Company shall be deemed to be references to the Manager.

“Management Fee” means an amount equal to the greater of (i) Two Percent (2%) per annum of the aggregate Capital Contributions of the Class A Members of the Fund (regardless of subclass) or (ii) Two Percent (2%) per annum of the Gross Asset Value of the Fund’s assets.

“Manager” means SSG Fund Management, LLC, a Texas limited liability company, and any Manager admitted as such in accordance with this Agreement, in its capacity as Manager of the Fund.

"Managing Entities" means the Manager, the Management Company and their respective Affiliates. As used herein, covenants of the "Managing Entities" shall include covenants of the Manager and the Management Company to undertake the covenanted action or inaction and to cause each of their respective Affiliates to do the same.

"Managing Entity" means any one of the Managing Entities.

"Material Adverse Effect" means if the Manager, in its reasonable discretion, determines that, and received an opinion of counsel reasonably acceptable to the affected Member to the effect that, that participation in the Fund by any Member, when taken by itself or together with the contributions or participation by any other Members, is reasonably likely to (i) result in a violation of a statute, rule or regulation of a United States federal, state or local or foreign governmental authority which is reasonably likely to have a material adverse effect on a Portfolio Investment, any Member or the Fund or any Affiliate of the Fund, (ii) subject a Portfolio Investment, any Member or the Fund or any Affiliate of the Fund to any material filing, material regulatory requirement (including the registration or other requirements of the Investment Company Act and the Investment Advisers Act) or material tax to which it would not otherwise be subject, or materially increase such tax, or make such filing or regulatory requirement substantially more burdensome, (iii) result in any assets owned by the Fund being deemed to be "plan assets" under ERISA, or (iv) have any adverse effect on any of the federal or state regulatory authorizations, waivers or exemptions of a Portfolio Investment, and, in the case of clause (i), (ii), (iii) or (iv), such result, as determined by the Manager, would not be advisable in light of the circumstances, and the Manager shall promptly notify in writing the Members of all such determinations.

"Maximum Capital Contribution Amount" means \$20 million.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Membership Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i).

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

"Member Nonrecourse Deductions" has the meaning set forth in Treasury Regulations Section 1.704-2(i), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fund year shall be determined in accordance with the rules of Treasury Regulations Section 1.704-2(i)(2).

"Members" means, collectively, the Manager and the other Members. Reference to a "Member" shall refer to any one or more of the Members, as the context may require.

"Membership Interest" or "Interest" means the entire ownership interest of a Member in the Fund at any particular time, including without limitation, such Member's right to share in Net Income, Net Loss, or similar items of, and to receive distributions from, the Fund, any and all rights to vote, and the rights to any and all benefits to which such Member is 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.

"Membership Minimum Gain" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(2), and the amount of Membership Minimum Gain, as well as any net increase or decrease in Membership Minimum Gain, for a Fund year shall be determined in accordance with the rules of Treasury Regulations Section 1.704-2(d).

"Memorandum" means the Confidential Private Placement Memorandum of the Fund, dated January 8, 2024, as it may be amended and/or supplemented from time to time.

"Money Market Investment" means an investment of the Fund made for short-term interim purposes pending distributions to the Members, investment in Portfolio Investments or payment of expenses, in any of the following: (a) bonds or interest-bearing notes or obligations which (i) are issued or guaranteed by the United States or any agency thereof for the payment of which the full faith and credit of the United States is pledged and (ii) having maturities or durations not to exceed 180 calendar days; (b) commercial paper of "prime" quality, as defined by either a rating of A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service, Inc., such paper not to exceed six (6) months and one (1) day maturity; (c) bills of exchange or time drafts drawn on and accepted by a commercial bank having undivided capital and surplus in excess of \$500,000,000, otherwise known as banker's acceptances, which have a maturity of not longer than 90 calendar days and which are eligible for purchase by the Federal Reserve System; (d) negotiable certificates of deposit issued by a Federal- or State-chartered bank or savings and loan association or by a branch of a foreign bank licensed by the State of New York, each having (i) undivided capital and surplus in excess of \$500,000,000 and (ii) debt rated no lower than A by Standard & Poor's Corporation or A by Moody's Investors Service, Inc.; (e) repurchase agreements secured or guaranteed by bonds or interest-bearing notes or obligations delivered to a third party custodian issued or guaranteed by the United States or any agency thereof for the payment of which the full faith and credit of the United States is pledged; (f) any money market mutual funds with assets of not less than \$750,000,000; and (g) any cash, bank or money market account at one or more banks meeting the criteria contained in clause (d) above that the Manager may select.

"Net Income" or "Net Loss" means an amount equal to the Fund's taxable income or loss with respect to applicable investments or activity, determined in accordance with the principles of Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction or expense required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments, it being the intention not to duplicate any item of income or loss:

(a) any income of the Fund that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of Net Income or Net Loss shall be taken into account in computing such taxable income or loss;

(b) any expenditures of the Fund described in Code Section 705(a)(2)(B), or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition of Net Income or Net Loss shall be taken into account in computing such taxable income or loss;

(c) in the event the Gross Asset Value of any Fund Asset is adjusted pursuant to subparagraph (b) or subparagraph (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) to the extent an adjustment to the adjusted tax basis of any Fund Asset pursuant to Code Section 734(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Fund, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss;

(f) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation; and

(g) notwithstanding any other provision of this definition of Net Income or Net Loss, any items which are specially allocated pursuant to Article 4 hereof shall not be taken into account in computing Net Income or Net Loss.

The amounts of the items of Fund income, gain, loss, deduction or expense available to be specially allocated pursuant to Article 4 hereof shall be determined by applying rules analogous to those set forth in this definition of Net Income or Net Loss.

"Nonrecourse Deduction" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"Offering Expiration Date" means the first to occur of (i) the Subsequent Closing date on which the Fund completes subscriptions which, when aggregated with all prior subscriptions for Interests in the Fund, total the Maximum Capital Contribution Amount, and (ii) the date which is the conclusion of the Investment Period.

"Organizational Expenses" means all amounts of out-of-pocket expenses incurred by the Fund, the Manager or any other investment vehicle formed the purpose of owning Portfolio Investments in connection with the organization of the Fund, the Manager or any other investment vehicle formed for the purpose of owning Portfolio Investments or in connection with the offering of Membership Interests to the Members (including, without limitation, fees and disbursements of attorneys and other professionals).

"Parallel Investment Vehicle" has the meaning specified in Section 5.3.2(g).

"Parallel Investment Vehicle Agreement" has the meaning specified in Section 10.3.5.

"Partnership Representative" has the meaning specified in Section 7.6.

"Performance Members" shall mean the Class B Members identified on the signature page(s) hereto.

"Percentage Interest" means that percentage which corresponds with the ratio which each Member's Capital Contribution bears to the total Capital Contributions of all Members.

"Person" means and includes an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof or any entity similar to any of the foregoing.

"Placed Capital" means, as of the date of determination, (a) the aggregate amount invested in Portfolio Investments held by the Fund at such date; plus (b) any costs and expenses incurred by the Fund in identifying, evaluating and arranging any Portfolio Investments held by the Fund at such date; plus (c) all costs and expenses (including interest costs, other financing costs and legal expenses) incurred by the Fund in connection with the Credit Agreement.

"Placement Fee" means a one-time placement fee equal to One and One-Half Percent (1.5%) of the investment amount invested by the Fund in Portfolio Investment. The Placement Fee shall only be paid on amounts invested by the Fund after amounts invested by the Fund in one or more Portfolio Investments exceed \$500,000.

"Portfolio Investment" means any investment made by the Fund or any investment vehicle formed to make Portfolio Investments, other than Money Market Investments, that is consistent with the Investment Objective.

"Preferred Return" means an amount per annum equal to (i) Eight Percent (8%) per annum on the amount of Unreturned Capital Contributions of the Class A Members regardless of subclass.

"Regulatory Allocations" has the meaning specified in Section 4.2.7.

"Securities" means any of one or more of the following: (a) capital stock (both common and preferred); partnership interests (both limited and general); limited liability company interests; interests in any acquisition, venture capital or other investment funds; notes; bonds; debentures; other obligations, instruments or evidences of indebtedness (whether convertible or otherwise); and other securities and equity interests of whatever kind of any Person, whether readily marketable or not; (b) any rights to acquire any of the Securities described in clause (a) above (including, without limitation, options, warrants, rights or other interests or other Securities convertible into any such Securities); (c) any Securities received upon conversion of, in exchange for, as proceeds from the disposition of, as interest on, or as stock dividend or other distribution from, any of the Securities described in clauses (a) or (b) above; or (d) any other investments (including, without limitation, "non-traditional" asset investments such as interest-rate sensitive securities, commodities, and futures contracts).

"Side Letter" has the meaning specified in Section 10.3.5.

"Side Letter Grantee" has the meaning specified in Section 10.3.5.

"Subscription Agreement" means each of the several Subscription Agreements between the Fund and each of the Class A Members.

"Subsequent Closing" shall mean any closing of the sale and issuance of Class A Units hereunder following the date of the Initial Closing.

"Substitute Member" means any Assignee that has been admitted to the Fund as a Member pursuant to Section 8.7 by virtue of such Assignee's receiving all or a portion of a Membership Interest from a Member or its Assignee.

"Successor Fund" has the meaning specified in Section 5.3.1(a).

"Supermajority in Interest of the Members" means Members holding, in the aggregate, sixty-six and two-thirds percent (66-2/3%) of the aggregate Percentage Interests held by all Members.

"Tax Liability Distribution" has the meaning specified in Section 3.3.

"TBOC" means the Texas Business Organizations Code, in effect on the date hereof and as it may be amended hereafter from time to time, and any successor statute thereto.

"Temporary Debt" means debt incurred by the Fund to purchase an asset which is intended to be repaid by Capital Contributions to the Fund.

"Transfer" means a sale, transfer, assignment, gift, bequest or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by realization upon any Encumbrance or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings); provided that, notwithstanding the foregoing, the Manager's pledge of its Membership Interest in connection with the transactions contemplated under the Credit Agreement shall not constitute a Transfer. The term "Transferred" shall have a correlative meaning.

"Treasury Regulations" means the permanent and temporary regulations promulgated by the U.S. Treasury Department under the Code, as such regulations may be amended from time to time.

"Unit" means a unit-denominated Membership Interest representing a fractional part of the Membership Interests of all of the Members, and shall include all types and classes of Units, including the Class A Units and the Class B Units; *provided that* any type or class of Unit shall have the privileges, preference, duties, liabilities, obligations, and rights set forth in this Agreement.

"United States" includes its several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

“Unreturned Capital Contribution” shall mean the aggregate Capital Contributions of a Member reduced by the amount of all prior cash distributions to the Member.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Company Agreement of SSG Recreation Fund 01, LLC as of the day and year first above written.

FUND:

SSG RECREATION FUND 01, LLC

By: SSG Fund Management, LLC,
Its Manager

Jay M. Personius,
Manager, Chairman of the Board

CLASS A MEMBERS:

[Class A Members shall execute this Company Agreement by execution of a Subscription Agreement.]

CLASS B MEMBER:

SOUTH SILVER GROUP, LLC

Jay M. Personius, Manager

TITAN HOME INVESTMENT CAPITAL, LLC

Rebekah E. Personius, Manager