Operating Agreement
of PRIME EQUITY
FUND II LLC

a Delaware Limited Liability Company

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

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED AND QUALIFIED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE FUND, SUCH REGISTRATION AND QUALIFICATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, THE TERMS AND CONDITIONS OF WHICH ARE SET FORTH IN THIS AGREEMENT.

THE SECURITIES REPRESENTED BY THIS AGREEMENT ARE SUBJECT TO AND MAY ONLY BE SOLD, DISPOSED OF OR OTHERWISE TRANSFERRED IN COMPLIANCE WITH CERTAIN RIGHTS OF FIRST REFUSAL AND RIGHTS OF CO-SALE. SUCH RIGHTS OF FIRST REFUSAL AND RIGHTS OF CO-SALE ARE BINDING ON CERTAIN TRANSFEREES OF THESE SECURITIES.

PURCHASERS OF SECURITIES REPRESENTED BY THIS AGREEMENT SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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LIMITED LIABILITY COMPANY (OPERATING) AGREEMENT

This Limited Liability Company Operating Agreement (this "***Agreement***") of PRIME EQUITY FUND II, LLC, a Delaware limited liability company (the "***Company***") is entered into as of May _, 2019 (the "***Effective Date***"), by and among Prime Equity, LLC, a New Jersey limited liability company (the "***Company Manager***"), the Initial Members (as defined below) holding Class A Interests executing this Agreement as of the Effective Date, and each other Person who after the Effective Date hereof becomes a Member of the Company in accordance with the terms hereof (collectively, the "***Members***").

RECITALS

WHEREAS, the parties hereto desire to enter into this Agreement to provide for the management of the business and the affairs of the Company, and to set forth the rights, obligations, and interests of the parties hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1. Definitions. For purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.1.

"***Act***" means the Delaware Limited Liability Company Act and any successor statute, as amended from time to time.

"***Adjusted Capital***" means, as of any day, a Member's total Capital Contributions reduced by the aggregate amount of all Distributions made to such Member under Section 5.3(c). The Members' Adjusted Capital balances shall be maintained by the Company.

"***Affiliate***" means with respect to a specified Person: (a) any Person that directly or indirectly through one or more intermediaries, alone or through an affiliated group, controls, is controlled by, or is under common control with, such specified Person, (b) any Person that is an officer, director, partner, trustee, grantor, or employee of, or serves in a similar capacity with respect to, such specified Person (or an Affiliate of such specified Person), (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified Person or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified Person has a substantial beneficial interest, or (d) any relative or spouse of the specified Person. The terms "***Controls***", "***Controlled by***", or "***Under Common Control With***", whether or not capitalized means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person through ownership of voting securities, contract or otherwise.

"***Agreement***" means this Limited Liability Company Operating Agreement, as executed and as it may be amended, modified, supplemented or restated from time to time, and including any schedules and exhibits to this Agreement.

"***Capital Account***" of a Member means the capital account maintained for the Member in accordance with Article VI.

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

"***Capital Contribution***" means anything of value that is contributed (or deemed contributed pursuant to Treasury Regulations Sec. 1.704-1(b)(2)(iv)(d)) to, or on behalf of, the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take "subject to" under Code Section 752) by an individual Member or all of the Members, as the context requires, as a prerequisite for, or in connection with, membership, including (without limitation) any combination of cash, property, services rendered, a promissory note or any other obligation to contribute cash or property or render services. The value of any such Capital Contribution shall be established by the Company Manager.

"**Pacific"** means 1346 Pacific St LLC, a Delaware limited liability company formed to acquire and hold the Property.

"***Distributable Net Cash Flow***" means the gross proceeds received by the Company from all sources (other than Capital Contributions, borrowed funds, or proceeds from the sale or disposition of Property or other Company assets) as is determined by the Company Manager less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as is reasonably determined by the Company Manager. At such point as the Company Manager determines that the unused balance of any such reserves previously retained out of funds that would otherwise have been Distributable Net Cash Flow is no longer necessary, the same shall thereupon be deemed Distributable Net Cash Flow.

"***Distributable Net Transaction Proceeds***" means the net sale proceeds from all sales, retirements and other dispositions of Company assets as is determined by the Company Manager less any portion thereof used to establish reserves, all as is reasonably determined by the Company Manager in its sole and absolute discretion. At such point as the Company Manager determines that the unused balance of any such reserves previously retained out of funds that would otherwise have been Distributable Net Transaction Proceeds is no longer necessary, the same shall thereupon be deemed Distributable Net Transaction Proceeds.

"***Distribution***" means the Company's direct or indirect distribution of Distributable Net Cash Flow or Distributable Net Transaction Proceeds to a Member as provided herein.

"***Entity***" means an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a partnership, trust, limited liability company, corporation, joint venture, cooperative or association.

"***Interest***" means a Person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive Distributions from the Company including the right to vote but only to the extent explicitly provided in this Agreement.

"***Initial Member***" means each Person holding Class A Interests executing this Agreement on or before the Effective Date and admitted as a Member as of the Effective Date.

"***Investment***" means acquiring a membership interest in the Company.

"***Liquidation Proceeds***" means the net cash available for Distribution by the Company upon the dissolution of the Company after payment of the costs of dissolution, payment of the outstanding debts and obligations of the Company, and payment of all costs and expenses of the Company, including the establishment of such reserves as the Company Manager, in its sole and absolute discretion, feels are required to fulfill the Company's obligations during and after such termination or liquidation of the Company.

"***Company Manager***" means PRIME EQUITY, LLC, a New Jersey limited liability company.

"***Member***" means (a) each Initial Member/s holding Class A Interests and (b) each Person who is hereafter admitted as a Member in accordance with the terms of this Agreement and the Act (including Class A and class B Interest holders), in each case until such Person ceases to be a Member of the Company.

"***Membership Interest***" or "***Interest***" means Class A and class B membership interest in the Company owned by a Member, including such Member's right (a) to financial interest, (b) to vote on, consent to or otherwise participate in any decision of the Members as provided in this Agreement, and (c) to receive information pertaining to the Company's business and affairs as provided in this Agreement. The allocation of Membership Interests as reflected in the Company's records from time to time is presumed to be correct for purposes of this Agreement and the Act.

"***Percentage Interest***" means, with respect to each Member, the Membership Interest held by such Member, as a percentage of the total of all issued and outstanding Membership Interests.

"***Permitted Transfer***" has the meaning described in Section 7.2.

"***Person***" means a natural person or an Entity.

"***Property***" means real estate located at 1346 Pacific Street, Brooklyn, NY

"***Regulations***" means the Treasury Regulations (including any temporary regulations) from time to time promulgated under the Internal Revenue Code of 1986, as amended.

"***Securities Act***" means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

"***Subscription Agreement***" means, as to each Member, that certain agreement to purchase Membership Interests dated effective as of the Effective Date.

"***Super-Majority in Interest***" means those Members owning Membership Interests that represent more than 75% of the aggregate Percentage Interests in the Company that are entitled to vote on the matter under consideration.

"***Transfer***" (including "***Transferred***" and "***Transferring***," as applicable) means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Membership Interests owned by a Person or any interest (including a beneficial interest) in any Membership Interests owned by a Person (including, without limitation, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process). "***Transfer***" when used as a noun shall have a correlative meaning. "***Transferor***" and "***Transferee***" mean a Person who makes or receives a Transfer, respectively.

ARTICLE II
ORGANIZATION

2.1. **Formation**. The Company has been organized pursuant to the Act. This Agreement shall constitute the "limited liability company agreement" (as that term is used in the Act) of the Company. The rights, powers, duties, obligations and liabilities of the Company Manager and the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of the Company Manager or any Member are different by reason of any provision of this Agreement than they would be under the Act in the absence of such provision, this Agreement shall, to the extent permitted under the Act, control.

2.2. **Name and Place of Business**. The Company shall transact business under the name and at the address set forth in the first paragraph of this Agreement or under such other name or at such other address as the Company Manager may hereafter select.

2.3. **Purpose; Powers**.

(a) *Purpose*. The purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act and to engage in any and all activities necessary or incidental thereto. Notwithstanding the foregoing, except with the written

consent of the Company Manager and a Super-Majority of Members, the Company shall engage in no business other than: (a) consummating the Investment; (b) managing and holding the interest in Pacific; (c) Transferring, selling or otherwise disposing of the interest in Pacific; and (d) performing all acts as may in the opinion of the Company Manager be necessary or appropriate in connection therewith or incidental thereto.

(b) *All Necessary Powers*. The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the Act.

2.4. **Compliance with Applicable Laws and Rules**. No business or activities authorized by this Agreement shall be conducted that are forbidden by or contrary to any applicable law or to the rules or regulations lawfully promulgated thereunder. If any of the terms, conditions or other provisions of this Agreement shall be in conflict with any of the foregoing, such terms, conditions or other provisions shall be deemed modified so as to conform therewith. Each Member agrees to comply with all such laws, rules and regulations.

2.5. **Other Certificates**. The Company Manager, or if required, the Members, shall execute and the Company Manager shall file and cause to be published or recorded from time to time such other statements, certificates and other documents as may be required by law or as the Company Manager deems appropriate in any state or county in which the Company transacts business.

2.6. **Ownership of Company Property; Partition**. All property acquired by the Company, real or personal, tangible or intangible, shall be owned by the Company as an entity, and no Member, individually, shall have any ownership interest therein. Each Member hereby expressly waives any right to require partition of any Company property or any part thereof.

2.7. **Term**. The term of the Company commenced on the Effective Date and shall continue in existence until the Company is dissolved in accordance with the provisions of this Agreement or as provided by law. However, it is expected that the Company would be dissolved no later than obtaining DOB plan approvals. In the event that it is not feasible to dissolve the Company by a special majority of no less than 90% of the Investors must agree to continue its operations until the Company could be dissolved.

2.8. **Tax Classification**. The parties hereto intend that the Company shall always be operated in a manner consistent with its treatment as a partnership for Federal and applicable state income tax purposes. Except as provided in the foregoing sentence, the parties hereto intend the Company to be a limited liability company organized under the Act, and that they be Members, and not partners in a general partnership, limited partnership, or joint venture between the Members for state law or any other purpose. The Members acknowledge the Company's status as a limited liability company formed under the Act, and no Member shall take any action inconsistent with the express intent of the parties hereto.

ARTICLE III
MEMBERSHIP

3.1. **Members**. The Persons who enter into this Agreement shall be Members of the Company until they cease to be Members in accordance with the provisions of the Act or this Agreement.

3.2. **Nature of Membership Interest**. A Membership Interest in the Company constitutes the personal estate of the Member. No Member has any interest in any specific asset or property of the Company. No Member shall be required to perform services for the Company solely by virtue of being a Member, and unless approved by the Company Manager, no Member shall perform services for the Company in his or her capacity as such or be entitled to compensation for services performed for the Company. Subject to Section 3.5, in the event of the death or disability of any Member, the executor, trustee, administrator, guardian, conservator or other legal representative of such Member may exercise the rights and powers of that Member (in the capacity of an Interest holder only) for the purpose of settling the Member's estate or administering the Member's property, and shall be bound by all of the provisions of this Agreement. If a Member who is not a natural person is dissolved or wound up, the successor or legal representative of such Member may exercise the rights and powers of an Interest holder and shall be bound by all of the provisions of this Agreement.

3.3. **Limited Liability of Members**.

(a) *Limited Liability Generally*. Except as expressly set forth in this Agreement or required by the Act or any other law, no Member shall be liable for the debts, obligation or liabilities of the Company, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Company; *provided, however*, that the capital of the Members in the Company shall be subject to the risk of the business of the Company and the claims of its creditors as provided by the Act or any other law.

(b) *Limited Intra-Company Liability*. In addition, except to the extent otherwise required by the Act or any other law, neither any Member nor any of their directors, officers, employees, members, managers, partners, shareholders, trustees, subsidiaries or Affiliates nor any of their respective directors, officers, employees, partners, managers, members, trustees, shareholders or agents shall be liable or responsible to the Company or to any other Member for any acts or failures to act by such Member within the scope of the authority conferred on such Member by this Agreement if such Member in good faith acted in any manner reasonably believed to be in, or not opposed to, the best interests of the Company, except to the extent such loss, liability, damage, settlement cost or other expense resulted from the gross negligence, willful misconduct, unlawful acts or material breach of this Agreement of such Member.

3.4. **Withdrawal; Redemption**.

(a) *No Withdrawals*. Except as expressly provided herein, no Member or Transferee may withdraw his, her or its Capital Contribution, or withdraw otherwise withdraw, resign or retire from the Company at any time, nor may any Member compel the Company to effectuate any redemption of his, her or its Interests. The Company has no obligation whatsoever to redeem any Interests or any Member's Capital Account or Capital Contribution.

(b) *Company Manager Discretion for Hardship*. Notwithstanding the foregoing, the Company Manager may, in its sole and absolute discretion, waive such withdrawal requirements if a Member is experiencing an undue hardship; *provided, however*, that under no circumstances whatsoever shall the Company be required to sell any assets or properties in order to fulfill any withdrawal request. Any withdrawal processed by the Company must be completed from excess cash that the Company possesses, and that is not reasonably required for its ongoing business operations, and there is no guarantee that the Company will have sufficient funds to cause the

redemption of any Interests.

(c) *Company Manager's Option to Force* Redemption. The Company Manager may, at any time, expel a Member and return a Member's Adjusted Capital balance for "cause" (as defined below). Any such expulsion would be effective immediately upon the Company Manager's providing written notice to the Member. Any associated return of Adjusted Capital balance would not be considered a Distribution and would not be included in the determination of such Member's return on investment. For the avoidance of doubt, the Company Manager is expressly authorized to selectively redeem one or more Member(s) at any time, but only for "**cause**," upon which event such Member(s) will no longer be considered a Member(s) of the Company.

For purposes of this Section 3.4(c), the term "***cause***" shall mean:

(1) any material breach of or any failure to perform any material obligation under this Agreement or any other document contained in the Property Information Package;

(2) any threatened or actual action, demand or proceeding (including arbitration), whether civil, criminal, administrative, or investigative, arising out of or relating to the conduct of the activities of the Company or such Member; or

(3) where continued association of the Company with such Member threatens to bring about reputational or other damage to the Company.

A Member's expulsion pursuant to this Section 3.4(c) shall be effective upon such Member's receipt of written notice from the Manager of such expulsion

(d) *Redemption of Investment Entities*. Unless permitted in the sole discretion of the Company, no Member that is (i) an investment company, as defined under the Investment Company Act of 1940, as amended (the "***Investment Company Act***"), and (ii) a fund that is excluded from the definition of investment company on the basis of either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, the owners of which would be, pursuant to Section 3(c)(1)(A) of the Investment Company Act, counted for purposes of determining the number of Members of the Company (an "***Investment Entity***"), shall be permitted to own more than a 9.99% interest in the Company. If at any time a Member that is an Investment Entity is deemed to own more than a 9.99% interest, the Company may, in the sole discretion of the Company Manager, redeem all or a portion of such Member's Membership Interest in an amount equal to the Member Capital Contribution for such Membership Interest or such lesser amount as is acceptable to the Company Manager and such Member.

3.5. **Termination of Membership Interest**. Upon the occurrence of any of the following events (each a "***Termination Event***") with respect to any Member: (a) the Membership Interest of such Member shall be automatically terminated and such Member (or such Member's successor in interest) shall cease to be a Member, and shall hold a Financial Interest only; (b) such Member (or such Member's successor in interest) shall nevertheless remain liable for all of his, her or its obligations as a Member under this Agreement including, without limitation, any obligation to make further Capital Contributions; and (c) the Membership Interest of such Member (or such Member's successor in interest) may be purchased by the Company Manager or the remaining Members as provided in Article VII, it being acknowledged and agreed by each Member that such

termination or purchase of a Membership Interest upon the occurrence of any of such events is not unreasonable under the circumstances existing as of the Effective Date:

(a) *Death or legal incompetency*. The death or legal incompetency (as declared by a final court decree) of such Member, unless the same results in a Permitted Transfer;

(b) *Breach*. The material breach by such Member of, or such Member's inability to perform his, her or its material obligations under, this Agreement;

(c) *Bankruptcy*. Any of the following: (a) the filing of an application by such Member for, or his or its consent to, the appointment of a trustee, receiver, or custodian of his or its other assets; (b) the entry of an order for relief with respect to such Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by such Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of such Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by such Member generally to pay his or her debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his or her inability to pay his or its debts as they become due;

(d) *Withdrawal*. The withdrawal, retirement or resignation of such Member in violation of Section 3.3 of this Agreement;

(e) *Unpermitted Transfer*. The occurrence of any event that is, or would cause, a Transfer of all or part of such Member's Membership Interest in contravention of this Agreement;

(f) *Dissolution Action*. Such Member's filing of an action seeking a decree of judicial dissolution pursuant to the Act; or

3.6. **Matters on Which the Members are Entitled to Vote**. Members may vote only on any acts, transactions, matters and things that require approval of Members pursuant to any express provision of this Agreement, which acts, transactions, matters and things shall be valid and effective only if approval by vote or written consent of that number of Members is obtained in the manner provided in such provision. Each Member shall have a number of votes equal to the Percentage Interest held by each such Member. Except as set forth in this Section 3.6, the Members shall have no voting, approval or consent rights, and each of the Members hereby waives his or her right to vote on, consent to, approve, or disapprove any act, transaction, matter or thing relating to the business and affairs of the Company.

3.7. **Meetings, Voting and Approval Procedures; Proxies; Consents**.

(a) *Meetings, Voting and Approval Procedures*. The Company shall not be required to hold an annual meeting of the Members. The Company Manager may call for special meetings of the Members, or call for the written approval of the Members without a meeting, to approve any matter that, under the terms of this Agreement, is subject to the approval or affirmative vote of the Members. Any meeting called hereunder may be held at the principal office of the Company or at such other location as may be designated by the by the Person(s) calling the meeting. The Company Manager or authorized Person(s) shall give Notice of such meeting not less than five (5) or more than sixty (60) days prior to the date of the meeting to all Members entitled to vote at the meeting, stating the place, date and hour of the meeting and the general nature of business to be transacted.

Notwithstanding the foregoing, notice may be waived by a written waiver of notice, a consent to the holding of the meeting, or any approval of the minutes of the meeting. No other business may be transacted at the meeting. Members may attend a meeting through use of conference telephone or similar communications equipment, so long as all Members participating can hear one another and such participation shall be deemed attendance at the meeting. Members holding Membership Interests that in the aggregate are at least equal to the amount required for the approval at issue shall constitute a quorum. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if the action taken, other than adjournment, is approved by the requisite Membership Interests as specified in this Agreement or the Act.

(b) *Proxies*. At all meetings of Members, a Member may vote in person or by proxy, which must be in writing. Such proxy shall be filed with the Company Manager before or at the time of the meeting, and may be filed by facsimile or electronic mail transmission to the Company Manager at the principal office of the Company or such other address as may be given by the Company Manager to the Members for such purposes.

(c) *Consents*. Any action that may be taken at a meeting of Members may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed and delivered to the Company by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all Members entitled to vote on that action at a meeting were present and voted. Any such approved action shall be effective immediately. The Company shall give prompt notice to all Members of any action approved by Members by less than unanimous consent.

(d) *No Spousal Votes.* In the case of Members subject to community property laws in their state of domicile, the Company shall recognize only the vote of the Members listed in the records of the Company as having the authority to vote the Membership Interests held by them, and, except pursuant to a duly executed proxy or power of attorney, any Member's spouse shall not be entitled to vote such Membership Interests, regardless of any community property interest such spouse may have in such Interests.

3.8. Members' Limited Rights and Powers. Pursuant to Article 5, the management of the Company is vested in the Company Manager. The Members shall have only the rights expressly stated in this Agreement to affect the Company's structure and its affairs. The Members shall have no right, power or authority to act for or on behalf of the Company or to bind the Company and, except for the exercise of the voting, approval and other rights expressly granted to the Members under the terms of this Agreement, shall not interfere or take part in the conduct or control of the Company's business. Any Member who takes any action or attempts to bind the Company in violation of this Section 3.8 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify the Company for any costs or damages the Company incurs as a result of the unauthorized act.

The restrictions described in this Section 3.8 shall control over and supersede any authority otherwise granted to Members pursuant to the Act. Any Member that takes any action or attempts to bind the Company in violation of this Section 3.8 shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

3.9. **Transactions of Members with the Company**. Subject to any limitations set forth in this Agreement and with the prior written approval of the Company Manager, a Member may transact business with the Company. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

ARTICLE IV
MANAGEMENT

4.1. **Authority of Company Manager**.

(a) *Company Manager Shall Control the Company*. Except for matters for which approval by the Members is expressly required by this Agreement or any mandatory provisions of the Act, all decisions concerning the management, operation and policy of the Company's business and affairs shall be made by the Company Manager, and the Company Manager shall have full, complete and exclusive authority, power and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all acts or activities customary or incident to the management, operation and policy of the Company's business, property or affairs. Among other things, the Company Manager will control the voting rights of the Company regarding certain decisions for the Company, as described in the operating agreement of the Company (a copy of which can be reviewed by Members). Decisions of the Company Manager within its scope of authority shall be binding upon the Company and each Member. Except for matters for which approval by the Members is expressly required by this Agreement or any mandatory provisions of the Act, no Member shall have the right to vote on any matters concerning the business, property or affairs of the Company. In addition, the Company Manager shall have all rights, powers and authority generally conferred by law or necessary, advisable or appropriate for accomplishing the purpose of the Company.

The Company Manager shall perform, or cause to be performed, all necessary Member communications and technology functions necessary to manage the Members' relationship with the Company and to provide the Member with reasonable updates on the Company.

(b) *Authority to Release Member Information to Governmental Authorities.*

The Department of the Treasury, the Internal Revenue Service ("***IRS***"), and other governmental agencies may from time to time impose certain compliance or reporting requirements that may require the Manager to request from the Members additional financial or personal information. These regulations, including (without limitation) the PATRIOT ACT and the Foreign Account Tax Compliance Act, may require increased due diligence, compliance activity, or reporting on the part of the Company Manager or Company. The Members acknowledge and agree that they will supply to the Company Manager all information reasonably necessary or advisable to carry out such functions or requirements.

4.2. **Limited Devotion of Time; Other Activities; Compensation from Others**.

(a) *Limited Devotion of Time*. The Company Manager has other business interests to which it may devote its time, and nothing herein shall require the Company Manager to devote its full time to the business and affairs of the Company. The Company Manager shall devote to the Company such efforts as the Company Manager in its sole and absolute discretion shall deem reasonably necessary to manage the business and affairs of the Company.

(b) *Other Activities*. Each Member and the Company Manager shall be entitled to engage in any business activity of any kind ("***Other Activities***"), and none of the other Members or the Company shall have any interest in such Other Activities of other Members or the Company Manager or to the income or proceeds derived therefrom. Among other things, each of the Company Manager and any Member may freely organize, administer, manage, advise and/or participate in other investments real estate funds, private or public Entities, real estate or lending transactions, lend funds to other Persons (or to each other), invest in Entities other than the Company to develop, construct, operate, transfer, lease and otherwise own and use real property, and to themselves directly develop, construct, operate, transfer, lease and otherwise own and use real property.

In addition to the transactions expressly permitted by this Agreement, the Company Manager may enter into business transactions with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with an independent third party, including selling properties and/or loans to, and buying properties and/or loans from, the Company.

With respect to any such other activities of any Member or the Company Manager: (i) there shall be no right of any other Member or the Company Manager in such other activities or to the income or proceeds derived therefrom, (ii) there shall not be deemed wrongful or improper, even if competitive with the business of the Company, and are hereby consented to by the other Members and Company Manager, and (ii) there shall be no obligation to present any outside investment opportunity to the Company, even if such opportunity is of a character which, if presented to the Company, could be taken by the Company.

(c) *Potential Compensation by Others and Conflicts of Interest*. Nothing contained in this Agreement shall preclude the Company Manager or any of its Affiliates, members, managers, officers, directors, shareholders, employees or agents from acting as a director, stockholder, officer, official, manager, consultant or employee of any Person, from receiving compensation for services rendered in connection with any Other Activities (including with the Company), from acting as a principal or employee of any Person (including of the Company) with whom the Company may contract for services or otherwise, or participating in profits derived from investments in (or in connection with the Company's investment in) any such Person (including in the Company), or from investing in any securities or other property for its own account.

Members recognize and agree to waive and bear the risk of these potential conflicts of interest.

4.3. Any fiduciary duties of the Company Manager to the Company and to the Members are reduced to the maximum extent permissible under Delaware law.

4.4. **Delegation of Duties**.

(a) *Authority to Delegate Duties*. The Company Manager is expressly authorized to delegate, outsource and/or subcontract any of its functions or service to third parties, including an Affiliate. Such services may include (without limitation) general, administrative, operations, clerical, bookkeeping, recordkeeping, Member relations, technology and/or financial services or assistance.

4.5. Limited Liability of Company Manager and its Affiliates. Neither the Company Manager nor any of its directors, officers, employees, members, managers, partners, shareholders, trustees, subsidiaries or Affiliates, nor any of their respective directors, officers, employees, partners, managers, members, trustees, shareholders or agents shall be liable or responsible to the Company or the Members for (a) any acts or failures to act, or any loss, liability, damage, settlement cost or other expense incurred by reason of acts or failures to act of any such Person, if such Person in good faith acted in any manner reasonably believed to be in, or not opposed to, the best interests of the Company, except to the extent such loss, liability, damage, settlement cost or other expense resulted from the gross negligence, willful misconduct, unlawful acts or uncured material breach of this Agreement of such Person; and (b) any claims, costs, expenses, damages or losses due to circumstances beyond the Company Manager's control, including, without limitation, due to the negligence, dishonesty, bad faith or misfeasance of any employee, broker or other agent of the Company. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that a Person did not act in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Company.

4.6. Indemnification of Company Manager and Affiliates.

(a) *Company Indemnification of Company Manager*. The Company shall indemnify, defend, protect and hold harmless the Company Manager, the Tax Matters Partner (if that is a Person other than the Company Manager) and the respective members, managers, partners, directors, officers, employees, shareholders, trustees and agents of any of the foregoing entities and of any entities comprising the foregoing entities (each such Person being an "***Indemnitee***") to the fullest extent permitted by law in effect on the date hereof and to such greater extent permitted by law as may hereafter from time to time permit, against any threatened, pending or completed suit, proceeding, demand, claim, investigation, liability, cause of action or injury (whether civil, criminal, administrative or investigative) (collectively, an "***Action***") and any loss, damage, cost, judgment, fine, penalty, settlement or expense, including expert witness, consultants' and attorneys' fees, and investigative costs (collectively, an "***Expense***") actually incurred by or levied against such Indemnitee in connection with any Action by which the Indemnitee was or is a party or is threatened to be made a party, or in which the Indemnitee is otherwise involved, by reason of the fact that the Indemnitee was or is a Company Manager (or related party) of the Company. Each Indemnitee is entitled to indemnification under this Section 4.6 in the case of such Action in all instances, without further action or determination by the Company, except in the event that it is judicially determined that the Indemnitee is guilty of gross negligence, bad faith, fraud or willful misconduct in the discharge of Indemnitee's duties as an agent of the Company.

(b) *Defense of Action by Company*. The Company shall have the option to control the defense of any Action for an Indemnitee is entitled to indemnification, and in such event the Indemnitee shall cooperate fully (and shall have the right to participate, at its own expense) in the defense of the Action and shall provide access to all information, documents and witnesses pertinent to the Action that are under its control and which do not violate privileges unique to that Indemnitee or which would otherwise materially prejudice the interests of the Indemnitee. The Company shall have the right to compromise, settle or otherwise dispose of any Action for which it has accepted and is providing indemnification and defense; *provided, however*, that (i) the Company shall be required to obtain the applicable Indemnitee's consent (which consent shall not be unreasonably withheld) if the settlement includes any admission of material wrongdoing on the part of, or any material restriction on, that Indemnitee, and (ii) the Company shall not, except with

the consent of the applicable Indemnitee (which consent shall not be unreasonably withheld), consent to entry of any judgment or enter into any settlement that does not include, as an unconditional term thereof, a complete release from all liability with respect to such Action for the applicable Indemnitee from all claimants or plaintiffs in the Action. The Company's indemnification obligations to any Indemnitee shall be reduced (or reimbursed if already paid by the Company) by any insurance proceeds or other monies received by that Indemnitee with respect to the Action or Expense for which the Indemnitee is being indemnified by the Company.

(c) *Defense of Action by Indemnitee*. In the event the Company elects not to assume control of the defense, settlement or other disposition of such Action, (i) the Company shall make payments of all amounts required to be indemnified to or for the account of the Indemnitee from time to time promptly upon receipt of bills or invoices relating thereto or when otherwise due and payable, provided, that the Indemnitee has agree in writing to reimburse the Company for the full amount of such payments if the Indemnitee is ultimately determined not to be entitled to such indemnification, (ii) Indemnitee shall obtain the prior written approval of the Company, which approval shall not be unreasonably withheld, before entering into or making any settlement, compromise, admission, or acknowledgment of the validity of such Action or any liability in respect thereof; and (iii) the parties hereto shall extend reasonable cooperation in connection with the defense of any Action pursuant to this and, in connection therewith, shall furnish such records, information, and testimony and attend such conferences, discovery proceedings, hearings, trials, and appeals as may be reasonably requested.

(d) *Partial Indemnification*. If a Person is entitled to indemnification by the Company for a portion of expenses incurred by such Person in connection with any Action but not for the total amount thereof, the Company shall nonetheless indemnify such Person for the portion of such expenses.

4.7. **Compensation and Reimbursement of Company Manager and Affiliates**. The Company will compensate and reimburse the Company Manager (and/or Affiliates of the Company Manager and/or the Company, as directed by the Company Manager) as follows for expenses incurred and/or services rendered to or on behalf of the Company.

(a) *General Operating Expenses*. The Company shall pay (or reimburse the Company Manager or its Affiliates for) its own general administrative and operating expenses, depending on the amount of the Company's investment into the Company and the formation and filing expenses incurred by the Company Manager or its Affiliates. The Company shall also reimburse the Company Manager (or its Affiliates) for any other expenses incurred by the Company Manager (or its Affiliates) that are properly considered ordinary and reasonable business expenses of the Company (including, without limitation, stationery, office supplies, postage, accounting and legal fees (including the time of in-house professionals of the Company Manager or its Affiliates, charged at market rates) related to the Company's business, notary, document preparation fees and escrow fees, travel expenses related to property inspection visits, and other ordinary and reasonable business expenses. The reimbursement of such administrative and operating expenses shall reduce the Distributable Net Cash Flow or Distributable Net Transaction Proceeds otherwise distributable to the Members.

4.8. **Change in Company Manager(s)**. The Company Manager will serve until the earlier of the Company Manager's resignation, removal, or bankruptcy or dissolution. If the then current Company Manager does not name an Affiliate as the replacement Company Manager, then the

Members shall promptly elect a successor as Company Manager.

(a) *Resignation*. The Company Manager may resign at any time by giving written notice to the Members, and no acceptance of the resignation shall be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the Company Manager or its Affiliates under any contract with the Company; and if the Company Manager or an Affiliate of the Company Manager is also a Member, shall not affect the Manager's or such Affiliate's rights as a Member or constitute withdrawal of a Member.

(b) *Removal*. The Members, upon the vote or written consent of a Super-Majority in Interest of at least 75%, may remove the Company Manager, but only for "***cause,***" which shall mean that the Company Manager did not act in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Company, and (a) acted (or failed to act) in a manner involving gross negligence, willful misconduct, or unlawful acts, (b) a willful and material breach of this Agreement that is not cured within a reasonable time after written notice signed by a Super-Majority in Interests, or (c) a bankruptcy or dissolution of the Company Manager that was not preceded by the installation of a replacement Company Manager.

4.9. <u>Tax Matters Partner</u>.

The Tax Matters Partner. General Partner is hereby designated as (i) the tax matters partner, as such term is defined in Section 6231(a)(7) of the Code prior to its amendment by the Revised Partnership Audit Procedure Rules, with respect to all taxable years prior to the application of the Revised Partnership Audit Procedure Rules (the "**Tax Matters Partner**") and (ii) the partnership representative for any tax period subject to the provisions of Section 6223 of the Code, as amended by the Revised Partnership Audit Procedure Rules (the "**Partnership Representative**"). General Partner is expressly authorized to take any steps it deems necessary or desirable to perfect its designation as either the Tax Matters Partner or the Partnership Representative, as the case may be. The Tax Matters Partner or Partnership Representative, as applicable, shall serve as such at Partnership expense with all powers granted to a tax matters partner or partnership representative, as applicable, under the Code and in a similar capacity with respect to foreign, state and local tax authorities and shall be permitted to take any and all actions permitted under Section 6221 through 6241 of the Code. The Tax Matters Partner or Partnership Representative, as applicable, shall be the exclusive representative of the Partnership in the course of an audit, any litigation or other dispute involving the Partnership arising from the tax returns or tax filings of the Partnership or the tax treatment of any Partnership item or transaction. Each Partner agrees (i) to cooperate with the General Partner with respect to tax matters relating to or affecting the Partnership, and (ii) to provide all information reasonably requested by General Partner as is relevant to tax matters, including, without limitation, information relevant to (x) reducing amounts owed under Section 6225 of the Code, (y) determining the Partner or Partners to which an imputed underpayment is attributable, and (z) determining the Partnership's eligibility to take any relevant actions under or to invoke any aspect of Sections 6221 through 6241 of the Code. This acknowledgment applies to each Partner whether or not it owns an Interest in both the reviewed year and the year of adjustment. Each Partner shall use commercially reasonable efforts to give prompt notice to each other Partner of any and all notices it receives from the Internal Revenue Service (or any other taxing authority) concerning the Partnership or any Subsidiary, including any notice of audit, any

notice of action with respect to a revenue agent's report, any notice of a thirty (30) day appeal letter and any notice of a deficiency in tax concerning the Partnership's or any Subsidiary's federal, state or local income tax returns. At Partnership expense, the Tax Matters Partner or Partnership Representative, as applicable, shall use commercially reasonable efforts to furnish each Partner with status reports regarding any negotiation between the Internal Revenue Service (or other taxing authority) and the Partnership promptly after any material new development, and each Partner shall be given reasonable advance notice by the Tax Matters Partner or Partnership Representative, as applicable, so that it shall have the opportunity to participate, and permit its professional tax advisers to participate, in all of such negotiations to the extent permitted by law. The Tax Matters Partner or Partnership Representative, as applicable, shall use commercially reasonable efforts to cause the Partnership accountants to prepare and file on a timely basis, with due regard to extensions, all tax and information returns which the Partnership or any Subsidiary may be required to file. No tax or information return shall be filed without the Approval of the each of the Partners, which Approval shall not be unreasonably withheld. The Manger shall use commercially reasonable efforts to cause the Partnership accountants to prepare and deliver, at Partnership expense, to each Partner on a timely basis an information reporting return (K-1) reflecting each Partner's distributive share of all income, gain, loss, deductions, allowances or credits of the Partnership for each Partnership Accounting Year, no later than ninety (90) days after the end of the applicable fiscal year of the Partnership. If there is a dispute as to the content of the Partnership's tax returns, such returns shall be filed as directed by the General Partner (with notice to the Partners contemporaneously with such filing that includes a copy of such tax returns).

ARTICLE V
FINANCIAL MATTERS

5.1. Capital Contributions.

Initial Capital Contribution. Upon execution of this Agreement, each Member shall make cash Capital Contribution to the Company in the amount set forth in each Member's Subscription Agreement.

5.2. Allocations. For income tax purposes, all items of income, gain, loss, deductions and credit of the Company for any tax period shall be allocated among the Members in accordance with the allocation of Net Income and Net Loss set forth in Exhibit D attached hereto.

5.3. Distributions.

(a) *Distributions Subject to Company Manager's Discretion*. As set forth herein, Distributable Net Transaction Proceeds are expected to be distributed to Members upon a Realization Event, depending on the Company's receipt of distributions from the Company and subject to the Company Manager's sole discretion to hold back any amounts it deems necessary to retain to create a litigation reserve or other required cash reserve, pay fees and expenses of the Company which are authorized to be paid by this Agreement, and for any other reason that the Company Manager believes to be in the best interests of the Company based upon the Company's available cash and the operational impacts.

(c) *Distributable Net Transaction Proceeds*. Distributions of Distributable Net Transaction Proceeds shall be distributed 100% to Pacific and from Pacific to the Company, and allocated as follows: (a) First, to pay off all expenses related to the Property, including any lien (including tax liens, etc.) and any mortgages encumbering the Property (b) Second, to pay all closing costs and other ordinary expenses with respect to the sale of the Property, including but not limited to real estate commissions, title charges, transfer taxes, attorney's fees, etc. (c) Third, to all Investors (not including the Manager) in proportion to their respective capital contributions, until each Investor has received an amount equal to its unreturned capital contribution; (d) Fourth, to the Manager, until it has received an amount equal to its out of pocket Expenses; (e) Fifth, to all Investors (including Class A and Class B, but not including the Manager) in proportion to their capital contributions until each Investor (not including the Manager) has received an 8% pre-tax preferred annual (non-compounding) return (computed as percentage of the Investor's capital contribution made by such Investor into the Company); (f) Sixth, to the Manager, a sum equal to any distribution made to the Investors under paragraph (e) above, to the extent that such funds are available after the distributions set forth in paragraphs (a) through (e) above (g) Thereafter, to the extend there are still available funds, such available funds shall be split 50% to the Manager and Class A Investors (divided 70% to Manager and 30% to Class A Investors), and the other 50% to the Investors (divided 60% to Class A Investors and 40% to Class B Investors). Notwithstanding, no distribution shall be made to the Manager unless and until the Investors have received an amount equal to their unreturned capital contribution plus an 8% pre-tax preferred annual (non-compounding) return (computed as percentage of the Investor's capital contribution made by such Investor into the Company). All proceeds from a Realization Event, partial Realization event, or otherwise ongoing / operational income (e.g. rental income) with respect to the Property shall be distributed according to the terms of the waterfall, unless the Manager decides that some or all of such proceeds are necessary to the day to day management of the Company and/or be invested in the Property.

(d) *Distributions Payable by check or ACH Transfer*. Distributions will be made by the Company, via checks or automated clearing house (ACH) transfer, to the account that a Member originally used to remit the initial Capital Contribution in connection with the subscription for a Membership Interest, unless otherwise agreed by the Manager.

(e) *Distributions and Taxable Income May be Different*. The amount of income reported to each Member on his, her or its Schedule K-1 may differ somewhat from the actual cash Distributions made during the Fiscal Year covered by the Schedule K-1 due to, among other things, factors unique to the tax accounting of the Company, such as the treatment of investment expense.

5.4. **Capital Accounts**. A separate Capital Account shall be established for each Member and maintained in accordance with the provisions of Exhibit D. A Transferee of Membership Interests succeeds to the portion of the Transferor's Capital Account that corresponds to the portion of the Membership Interest that is the subject of the Transfer.

5.5. **U.S. Withholding Tax**.

(a) *Authorization of Withholding; Deemed Distributions; Allocations.* The Company Manager is hereby authorized to withhold, out of any Distributions that would otherwise be made to any Member, an amount equal to the amount of U.S. federal, state or local income or other tax, and any related penalties, interest or other payments, that the Company Manager determines the Company is required to withhold or to pay to a taxing authority with respect to or

on behalf of such Member, and to file all necessary reports relating to such withholding or payment as may be required by law. Any amounts so withheld or paid shall be deemed actually distributed to such Member for all purposes of this Agreement. If the Company receives a distribution from the Company in respect of which tax has been withheld, the Company shall similarly be treated as having received cash in an amount equal to the amount of such withheld tax, and each Member shall be treated as having received as a Distribution the portion of such amount that is attributable to such Member's interest in the Company as equitably determined by Company Manager. If any such amounts are deemed for tax purposes to be a Company deduction or expense, the amount of any such deduction or expense shall be specially allocated to such Member.

(b) *Member Payment of Withholding Shortfall*. If at any time (i) the amount required to be withheld or paid by the Company with respect to or on behalf of any such Member shall exceed (ii) the amounts that are then available for Distribution to such Member, the Company Manager shall notify such Member of the amount of such excess, and such Member (whether or not it then remains a Member) shall promptly (and in no event later than thirty (30) days after the Company delivers a written request therefor) pay the Company such amount. If any such repayment is not timely made, the Company may (without prejudice to any other rights of the Company) collect such unpaid amounts from any subsequent Company Distributions that otherwise would be made to such Member. Each Member shall indemnify the Company and the Company Manager and hold each of them harmless from any liability with respect to any taxes, penalties or interest required to be withheld or paid to any taxing authority by the Company for or on behalf of such Member or with respect to such Member.

(c) *Company not Liable for Individual Member Withholding Rate Adjustments*. Any withholdings shall be made at the maximum applicable statutory rate under the applicable tax law, unless the Company Manager shall have received an opinion of counsel or other evidence, satisfactory to the Company Manager, to the effect that a lower rate is applicable, or that no withholding is applicable, in which case the Company shall make commercially reasonable efforts to utilize such lower rate. The Company is under no obligation to effect any adjustment to such normal-course withholding obligations, however, and notwithstanding that a Member may have timely filed documents with a taxing authority that might reduce the withholding requirements imposed on the Company, the Company shall not be responsible for any interest, loss of income, or other claimed damages to the Member based on the failure of the Company to make any adjustment to its normal-course withholding obligations.

5.6. **Offset**. The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

ARTICLE VI ACCOUNTING AND REPORTS

6.1. **Accounting Method**. Unless otherwise determined by the Company Manager, the books of the Company shall be kept in accordance with the accrual method of accounting, although for tax reporting purposes the Company Manager may choose to utilize the cash method of accounting; in any case, unless another method of accounting is required by the Code.

6.2. **Books and Records**. The Company shall cause to be kept complete and accurate records of the Company's affairs. The Company's books and records, its certificate of formation and all other formation certificates and documents, this Agreement, tax returns, Capital

Contributions, managers and Members' names, notice addresses and ownership interests and all Transfers thereof, and all other records required to be maintained by the Company pursuant to the Act shall be maintained by the Company or by such Persons as the Company may designate. The Company does not intend to provide Investors with audited financial statements.

However, the Manager will provide to Investors unaudited accounting reports every quarter. The accountant which will handle the project, and will provide the quarterly reports is Shia Strulovics CPA P.C., located at 1449 37th Street Suit 502, Brooklyn NY 11218

6.3. **Member Access**. The Members shall have the right, upon reasonable advance written notice to Company Manager and during normal business hours, to inspect all books and records pertaining directly to the affairs of the Company or the Member's investment in the Company, subject to the obligation to maintain all such information in confidence; *provided, however*, that the Company Manager may refuse to allow a Member to inspect any record, or to divulge any information, which the Company Manager reasonably believes is confidential (such as identifying information of other Members, except in connection with a request to call a Member vote) or the disclosure of which the Company Manager reasonably believes is not in the best interest of the Company.

6.4. **Reports and Financial Statements**. As soon as practicable after the close of each fiscal year, the Company Manager shall, at the expense of the Company, cause to be prepared and/or distributed, to the Members and to Transferees who have not become substituted Members, such reports and information as are reasonably necessary to (1) inform the Members of the results of the Company's operations for the fiscal year and (2) enable the Members to completely and accurately reflect their respective portion of the Company's income, gains, deductions, losses and credits in their federal, state and local income tax returns for the appropriate year, including the information with respect to the Company necessary for all such Persons (as applicable) to prepare their federal and state income tax returns, including Schedule K-1 (IRS Form 1065) forms for all of the foregoing Persons.

6.5. **Tax Responsibility**. Each Member shall bear full and complete responsibility for its own tax obligations in all jurisdictions in which it may be subject to any tax liability.

ARTICLE VII RESTRICTIONS ON TRANSFERS

7.1. **Transfers Generally Restricted**. Except as expressly set forth in this Article VII and other than Transfers of Membership Interests from the Company Manager to any Member, no Member shall for any reason, whether voluntarily, involuntarily or by operation of law, Transfer all or any portion of such Member's Membership Interest without (i) the prior written consent of the Company Manager, which consent may be given or withheld in the sole discretion of the Company Manager, (ii) the payment by the Member or the proposed new Member of a $200 transfer fee to cover the bookkeeping and accounting expenses of the Company Manager and (iii) the satisfaction of the other provisions of this Article VII. Each Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company's purposes and the relationship of the Members.

(a) Any voluntary Transfer violating this Article VII shall be void *ab initio*.

(b) Any involuntary Transfer violating this Article VII (including, without limitation, by means of the dissolution, death or mental disability of a Member, a court award in a divorce or similar proceeding or by other operation of law) shall (i) subject the Membership Interest to purchase by the Company pursuant to this Article VII and (ii) if the Company does not exercise its purchase option, the Membership Interest shall be terminated pursuant to Section 3.5 and the Transferee shall hold only a Financial Interest, unless otherwise admitted as a Member pursuant to this Article VII.

(c) No Member may seek to avoid these restrictions on Transfer by seeking to assign the Member's Membership Interest and, as a condition of such assignment or otherwise, agree or obligate himself to act on behalf of or under the direction of such Assignee with regard to any right or privilege which a Member would have with respect to such Transferred Membership Interest. Any attempts to act in such capacity shall be void and of no effect and shall not be recognized by the Company.

7.2. Permitted Intra-Company, Descent, or Estate-Planning Transfers. Notwithstanding the provisions of Section 7.1 (but subject in all cases to the other provisions of this Article VII), the following Transfers by a Member shall be permitted without the consent of the Company Manager (each, a "***Permitted Transfer***"):

(a) An intervivos Transfer of the Member's Interest to a Company Manager or Member or any of their Affiliates;

(b) by descent, devise or the laws of intestate succession, except that in such events the heirs and/or beneficiaries shall not become substitute Members (but instead, holders of a Financial Interest) unless they are already Members or Company Manager-approved pursuant to this Article VII;

(c) by a Member for estate planning purposes solely for the benefit of one or more Family Members (as defined below), *provided* that if the Member is a resident of a community-property State and is designating one or more Family Members who is or are not such Member's spouse, the Member must obtain consent from his or her spouse prior to or contemporaneously with designating a Transferee under this Section 7.2(c), *provided* further that such designation shall be made on a "beneficiary designation form" which will be made available by the Company; or

(d) by a Member for estate planning purposes to an estate-planning trust, limited liability company or other estate-planning vehicle (each, an "***Estate Entity***") of which the sole beneficiaries and/or interest holders are the Member, the Member's spouse, or other Family Members (as defined below), *provided* that if the Member is a resident of a community-property State and is designating one or more Family Members who is or are not such Member's spouse, the Member must obtain consent from his or her spouse prior to or contemporaneously with designating a Transferee under this Section 7.2(d), and *provided* further that such designation shall be made on a "beneficiary designation form" which will be made available by the Company, *provided* that the Transferor or Transferee, as applicable, shall promptly inform the Company Manager of any such Transfer and such Transferred Membership Interest shall remain subject to all of the terms and conditions contained herein, with no further Transfer of such Membership Interest to be permitted unless such subsequent Transfer also complies with all of the terms and conditions of this Agreement. As used herein, "***Family Member***" means (a) with respect to any

individual, such individual's spouse, parent, child or grandchild (whether natural, adopted or in the process of adoption), or any trust all of the beneficial interests of which are owned by any such individuals; and (b) with respect to any trust, the owners of the beneficial interests of such trust.

Transferee designations made pursuant to Section 7.2(c) shall remain in effect until such time as the Company Manager receives written notice from the Member indicating such Member's desire to revoke a prior designation, or written notice from the Member of a subsequent designation which shall supersede an earlier designation. A Member who designates a Transferee for estate planning purposes pursuant to Section 7.2(c) will remain a Member until such time as his or her death. Following the death of such Member, the beneficiaries that the Member designated to receive the Transferred Membership Interest pursuant to Section 7.2(c) shall become Substituted Member(s) and shall agree to be bound by all the terms of this Agreement and shall execute all documents reasonably requested by the Company Manager.

Prior to any Transfer to an Estate Entity, the Member shall give written notice thereof to the Company Manager and the trustee(s) or other Persons in control of such Estate Entity shall agree to be bound by all the terms of this Agreement and shall execute all documents reasonably requested by the Company Manager.

7.3. Process for Substituting Members. No Transferee (other than for intra-Company transfers and Permitted Transfers) shall have the right to become a substituted Member unless all of the following conditions are first satisfied:

(a) The written consent of the Company Manager to such substitution shall have been obtained, which consent may be given or withheld in the sole discretion of the Company Manager;

(b) A duly executed written instrument of assignment shall have been filed with the Company, specifying the portion of the Member's Membership Interest being Transferred and describing the Transferor's intention that the Transferee succeed to the Transferor's Membership Interest as a substituted Member with respect to such portion.

(c) The Transferor and Transferee shall have executed such other instruments as the Company Manager may deem necessary or desirable to effect such substitution, including the written acceptance and adoption by the Transferee of this Agreement and the execution and delivery to the Company Manager of a special power of attorney having the same form and content as Section 9.2 of this Agreement;

(d) The Company is reimbursed for all costs, including attorneys' fees, incurred in connection with the Transfer and a transfer fee of $200 per Transfer shall have been paid to the Company.

(e) All provisions of this Article VII shall have been complied with.

7.4. Company Manager's Right of First Refusal Upon Proposed Transfer; Right of Purchase Upon Termination Event.

(a) Other than in the case of a Permitted Transfer, subject to the provisions of this Article VII, if a Member (A) wishes to Transfer any or all of his, her or its Membership Interest (a "***Selling Member***") or (B) has been terminated upon the occurrence of a Termination Event (a

"***Former Member***"), then:

(1) In the case of a Transfer, the Selling Member shall first offer to sell (and the Company Manager shall have the right to purchase) such Membership Interest to the Company Manager or its designee(s), and

(2) In the case of a Termination Event, then the Company Manager or its designee(s) shall have the right to purchase (and the Former Member shall sell) such Membership Interest,

in each case at the price, upon the terms and conditions, and in the manner herein provided.

(b) *Transfer Procedure*. Except in the case of a Permitted Transfer, upon a Selling Member making a bona fide offer to sell to a third party, or upon receiving from a third party a bona fide offer to acquire, all or any portion of the Selling Member's Membership Interest (an "***Offer***"), a Selling Member shall give written notice to the Company Manager (a "***Sale Notice***"), and the Company Manager shall forward such Notice on to the other Members. The Sale Notice shall specify (i) a description and identity of the Membership Interest or portion thereof proposed to be Transferred (the "***Offered Membership Interests***"); (ii) the identity of the proposed Transferee; (iii) the consideration to be received for the Offered Membership Interests; and (iv) the terms and conditions upon which the Selling Member intends to make the Transfer. The Sale Notice shall be accompanied by a true and complete copy of the Offer, if it is written, and shall constitute an offer by the Selling Member to Transfer the Offered Interests to the Company Manager (or any Person(s) designated by the Company Manager) as more fully set forth below. In the event that the Offer includes consideration other than money, then the Company Manager and the Selling Member shall determine the fair market value of the non-monetary consideration within fifteen (15) days delivery of the Sale Notice or, if no agreement can be reached, the Selling Member and the Company shall promptly submit such issue to an arbitrator (using their reasonable best efforts to obtain an expedited determination of fair market value), the fees of which arbitrator to be split evenly between the Selling Member and the Company.

Beginning upon the later of (A) the Company Manager's receipt of the Sale Notice or (B) the date when the fair market value of any non-monetary consideration was determined, the Company Manager or its designee(s) shall have the right for fifteen (15) business days to purchase all or any portion of the Offered Membership Interests at a price and on the terms described in the Sale Notice. The Company Manager shall send written notice to the Members by the end of such 15 business-day period as to whether or not it will exercise such option, and if so of the amount of the Offered Interest to be purchased by the Company Manager or its designee.

(c) *Termination Event Procedure*. The purchase price for the Former Member's Membership Interest shall be the fair market value thereof as mutually agreed between the Former Member (or successor in interest) and the Company Manager (the "***Agreed Value***"), as of the last day of the month immediately preceding the Termination Event (or such other date as is mutually agreed); *provided* that if such parties cannot agree as to an Agreed Value within 15 days of the date giving rise to the Termination Event, the purchase price shall be the fair market value of the Former Member's Membership Interest as determined by an appraisal (the "***Appraised Value***") determined by an appraiser with at least five (5) years of experience in the valuation of properties of the type, and in the locality, of the property or properties that are the focus of the Company's Investment in the Company, which appraiser shall elected by mutual agreement by the Company

Manager and the Former Member within 21 days of the failure of the parties to agree as to an Agreed Value (or, if there is no such agreement, then two appraisers -- one chosen by each party -- will elect a third appraiser to resolve the dispute). The determination of Appraised Value by the appraiser shall be conclusive and binding on the parties. The Former Member and the Company shall each bear fifty percent (50%) of the costs of the appraiser.

Beginning upon the later of (A) the first day of the month following a Termination Event or (B) the date on which the Appraised Value was determined, the Company Manager or its designee shall have the right for fifteen (15) business days to purchase all or any portion of the Former Member's Membership Interest. The Company Manager shall send written notice to the Former Member by the end of such 15-day period as to whether or not it will exercise such option, and if so, of the amount of the Former Member's Membership Interest to be purchased by the Company Manager (or any Person(s) selected by the Company Manager).

The Former Member or his heirs or successors in interest, as the case may be, shall retain any portion of any remaining Membership Interest not purchased by the Company Manager. Such Former Member or his heirs or successors in interest, as the case may be, shall have only the rights of Assignees, unless they are admitted by the Company Manager as Members pursuant to this Article VII.

7.5. Compliance with U.S. Federal and State Securities Laws. The Membership Interests have not been registered under the Securities Act, or any applicable state or foreign securities laws. The Membership Interests may not be transferred in the absence of an effective registration statement under the Securities Act and due qualification under all applicable state or foreign securities laws, unless an exemption is available from the registration and qualification requirements of the Securities Act and all applicable state and foreign securities laws as determined by the Company Manager. Any Person desiring to Transfer any Membership Interests shall provide such information (including an opinion of counsel) as the Company Manager may reasonably request in order to make this determination.

7.6. Transfer May Not Cause Termination of Company or Cause Company to be Treated as a Corporation. No Transfer of any Membership Interests may be made if the Membership Interests sought to be Transferred, when added to the total of all other Membership Interests Transferred within the period of twelve (12) consecutive months prior to the proposed date of Transfer, would, as determined by the Company Manager, result in the termination of the Company under Section 708 of the Code. No Transfer of any Membership Interest may be made if the Transfer would cause the Company to be treated as a corporation pursuant to Code Section 7704 or Regulations Section 1.7704-1.

7.7. Effect of Transfer; Allocation of Benefits. Until the admission as a Member of its Transferee, a Transferor of a Membership Interest shall not be released from any obligations under this Agreement, and the proposed Transferee shall be treated as an Assignee and shall have none of the rights of a Member. After the consummation of any Transfer of any part of a Member's Membership Interest, the Membership Interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further Transfers shall be required to comply with all the terms and provisions of this Agreement.

A permitted Transfer shall have allocated, as of the effective date of such transfer, all Company revenues, Net Income and Net Losses and other items of income, gain, loss, deduction

and credit, pursuant to Section 706 of the Code and the applicable Treasury Regulations as determined by the Company Manager, *provided* that the Company has previously received written notice of such Transfer (which notice shall provide the name, address and taxpayer identification numbers of the Transferor and the Transferee, and the effective date of the Transfer). All Distributions shall be made to the holder of the Membership Interest of record on the date of Distribution. A Person who is substituted as a Member pursuant to this Agreement shall be deemed to have made the Capital Contributions attributable to the Membership Interests it is acquiring and shall succeed to the Capital Account of its Transferor Member to the extent of the Membership Interests it is acquiring.

ARTICLE VIII
DISSOLUTION & WINDING UP

8.1. **Dissolution**. The Company shall dissolve immediately upon the first to occur of the following events of dissolution:

(a) The Company Manager determines it is in the best interest of the Company to dissolve the Company;

(b) The sale, exchange, or other disposition of all of all or substantially all of the Pacific's assets and the receipt of all proceeds therefrom;

(c) Or the entry of a decree of judicial dissolution pursuant to the Act.

Except as otherwise expressly provided in this Agreement, any effort to cause a dissolution of the Company other than through the aforementioned events shall be a breach of this Agreement.

8.2. **Winding Up**. Upon the dissolution of the Company, the Company Manager shall immediately commence to wind up the Company's affairs in an orderly and businesslike manner and the Company shall not undertake any new business except as required to wind up the business and affairs of the Company. During the winding up of the Company, the Members shall continue to share Distributions, Net Income, Net Losses and credits in the same manner as is provided in Article VI, and all such Distributions, net income, net losses and credits shall be reflected in the Members' Capital Accounts. Liquidation Proceeds, if any, shall be applied in the following order of priority:

(a) To the Company's creditors, other than Members or the Company Manager, and the expenses of liquidation, in the order of priority provided by the Act or any other law;

(b) To set up any reserves that are reasonably determined by the Company Manager to be necessary for any contingent or unforeseen liabilities of the Company, which reserves shall be paid over to a bank or other Person as escrow holder and shall be disbursed under the direction of the Company Manager in payment of such contingent or unforeseen liabilities;

(c) In accordance with the Distribution provisions set forth in Section 5.3(b).

ARTICLE IX ADDITIONAL PROVISIONS

9.1. **Amendments**. Except as otherwise provided herein, this Agreement may only be

modified upon the written consent of the Company Manager and with the vote or written consent of a Super- Majority in Interest; *provided, however*, that the Company Manager, acting alone, may (without the consent of or prior notice to any Member) amend any provision of this Agreement or the Company certificate of formation (i) to make minor clerical corrections not substantively affecting the provisions of this Agreement or that merely cause the Agreement's dates or exhibit information to correctly reflect the Membership Interests or other Interests hereunder, (ii) in order to conform this Agreement or the certificate of formation to changes in the Act or interpretations thereof that the Company Manager deems advisable, *provided* that such amendment does not have a material adverse effect upon the Members or the Company, (iii) to elect for the Company to be reorganized under the laws of a different jurisdiction, (iv) to amend the exhibits or to otherwise reflect any Transfers, changes in Members, or similar matters, or (v) to make any change advisable in order to ensure that the Company will not be taxable as a corporation for federal income tax purposes. If any such amendment results in inconsistencies between the Company's certificate of formation and this Agreement, this Agreement will be considered to have been amended in the specific areas (and only in such areas) necessary to eliminate inconsistencies.

9.2. **Special Power of Attorney**. Each Member hereby irrevocably constitutes and appoints the Company Manager, with full power of substitution, as the Member's true and lawful attorney-in-fact for the Member and in the Member's name, place and stead, for the Member's use and benefit, to execute and file (a) all certificates, applications, reports and other instruments necessary to qualify or maintain the Company as a limited liability company in the states and foreign countries where the Company conducts its activities, (b) all instruments that effect or confirm changes or modifications of the Company or its status, including, without limitation, amendments to the Company's certificate of formation or the Act, and (c) all instruments of transfer necessary to effect the Company's dissolution and termination. The power of attorney granted by this Article IX is irrevocable, coupled with an interest and shall survive the death of the Member.

9.3. **Member Bankruptcy**. In the event that, with respect to a Member, a petition is filed seeking liquidation, reorganization, arrangement, readjustment, protection, relief or composition in any state or federal bankruptcy, insolvency, reorganization or receivership proceeding (a "***Bankruptcy***"), then the Member (the "***Bankrupt Member***") agrees to use his best efforts to avoid the Company being named as a party or becoming otherwise involved in the bankruptcy proceeding. Furthermore, this Agreement should be interpreted so as to prevent, to the maximum extent permitted by applicable law, any bankruptcy trustee, receiver or debtor-in-possession from asserting, requiring or seeking that (i) the Bankrupt Member be allowed by the Company to return the Bankrupt Member's Membership Interests to the Company or (ii) the Company be mandated or ordered to redeem or withdraw Membership Interests of the Bankrupt Member. In the event of the Bankruptcy of any Member, the Agreement shall be interpreted, to the maximum extent possible, to give effect to the provisions of this Section 9.18.

9.4. **Notices**. All notices and communications to be given or otherwise made to a Member shall be deemed to be sufficient if sent by electronic mail to the address listed on the records of the Company, the Company Manager. Members should send all notices or other communications required to be given hereunder to the Company Manager. Notices contemplated by this Agreement may also be sent by any commercially reasonable means, including hand delivery, first class mail, facsimile, and email or private courier. The notice must be prepaid and addressed as set forth in the Company's records, and will be effective on the date of receipt or, in the case of notice sent by first class mail, the third (3rd) business day after mailing. Each Member agrees to maintain an electronic mail address for the term of this Agreement and to promptly notify the Company Manager

of the electronic mail address and of any change in such Member's electronic mail address. If a Member does not have an electronic mail address, the Member agrees to obtain an electronic mail address and provide the electronic mail address to the Company.

9.5. **Governing Law**. This Agreement is entered into and shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to choice of law or conflict of law rules or principles whether of the State of Delaware or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than the State of Delaware.

9.6. **Arbitration of Disputes**. Other than for an action seeking equitable relief, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including (without limitation) the determination of the scope or applicability of this Agreement to arbitrate, or any other dispute, claim or controversy arising out of any interaction between the Company or the Manager (or any of their respective Affiliates), and/or any Member, shall be brought within one year of its accrual and be determined by confidential and binding arbitration in the State of Delawarebefore a single arbitrator. The arbitration shall be administered by a Delaware Arbitrator pursuant to its comprehensive arbitration rules and procedures (if the amount in controversy exceeds $250,000) or its streamlined arbitration rules and procedures (if the amount in controversy is less than or equal to $250,000) or, if applicable, pursuant to FINRA's rules as then in effect. If the arbitration is a class arbitration, the aggregate amount, of the purported claims of all putative class members shall be used to determine which rules apply. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The prevailing party in any dispute, claim or controversy shall be entitled to recover its costs of arbitration and reasonable attorneys' fees thereof. Each party hereby consents to exclusive personal jurisdiction and venue (and waives any objection to venue, including, but not limited to, inconvenient forum) for any dispute, claim or controversy described herein.

EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS OR ANY TRANSACTION CONTEMPLATED IN CONNECTION THEREWITH. THE PARTIES EACH ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

9.7. **Entire Agreement.** This Agreement and each Member's Subscription Agreement represent, with respect to such Member, the final, entire and complete agreement among the parties with respect to the subject matter hereof and supersedes all other prior or contemporaneous agreements, communications or representations, whether oral or written, express or implied. The parties acknowledge and agree that they may not and are not relying on any representation, promise, inducement, or other statement, whether oral or written and by whomever made, that is not contained expressly in this Agreement.

9.8. **Successors**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; subject, however, in all cases, to the provisions of Article VII.

9.9. **Covenant of Further Assurances**. The Members hereby agree to execute and deliver all such documents and perform all such acts as may be necessary, appropriate or reasonably required

to carry out the purposes and provisions of this Agreement.

9.10. **Severability**. If any term, covenant or condition of this Agreement or its application to any Person or circumstances shall be held to be illegal, invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to other Persons or circumstances shall not be affected, and each term hereof shall be legal, valid and enforceable to the fullest extent permitted by law, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

9.11. **Headings; Exhibits; Recitals**. The headings, captions and titles contained herein are inserted solely for convenience and shall not be used in construing or interpreting this Agreement. All recitals, exhibits, articles or schedules referred to in this Agreement are incorporated herein by reference and shall be deemed part of this Agreement.

9.12. **Interpretation**. Each of the Members acknowledges that it has had the opportunity to review this Agreement, any exhibits and the schedules attached hereto with its own legal counsel and is relying solely on its own legal counsel and not any statements or representations of the Manager, or the Company for legal or tax advice with respect to this Agreement. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.

9.13. **Injunctive Relief; Specific Performance**. The parties hereby agree and acknowledge that a breach of any material term, condition or provision of this Agreement that provides for an obligation other than the payment of money would result in severe and irreparable injury to the other party, which injury could not be adequately compensated by an award of money damages, and the parties therefore agree and acknowledge that they shall be entitled to seek injunctive relief in the event of any breach of any material term, condition or provision of this Agreement, or to enjoin or prevent such a breach, including without limitation an action for specific performance hereof, and the parties hereby irrevocably consent to the issuance of any such injunction. The parties further agree that no bond or surety shall be required in connection therewith.

9.14. **Signatures and Counterparts; Effectiveness**. The electronic signature of a party shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. Any electronically signed document shall be admissible as evidence in any judicial, arbitral, mediation or administrative proceeding, and no party hereto shall contest the admissibility of true and accurate copies of electronically signed documents. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when all parties have delivered their signatures to the other parties. Signatures may be delivered by facsimile or PDF transmission. All counterparts shall be deemed an original of this Agreement.

9.15. **No Waiver**. No breach of any of the terms or provisions of this Agreement should be deemed consented to or excused, nor shall the validity or acceptability of the performance of any

representation, promise or undertaking herein be deemed waived, nor shall any delay or deviation from the time or manner of any performance be deemed consented to unless such consent, excuse or waiver shall be in writing and signed by the party claimed to have consented, excused or waived. Any such consent, excuse or waiver shall not constitute consent to, waiver of, or excuse for any other similar or dissimilar breach, delay or deviation.

9.16. Confidentiality and Nondisclosure. All Members and other Persons employed by the Company or subject to this Agreement shall hold all information and documents regarding the Company, the Property, the terms of this Agreement and the negotiations leading to this Agreement in strict confidence and shall not disclose such information and documents to any Person other than their own officers, directors, shareholders, partners, managers, members, legal counsel, accountants or financial advisers who have a specific need to have access to such information or documents and who have been instructed to maintain the strict confidentiality of such information and documents. The obligations of this section do not apply to information or documents (a) whose disclosure may be necessary to comply with any federal or state securities laws or other applicable laws, regulations or court orders, (b) that are or become part of the public domain, (c) that are disclosed by the Company to third parties without restrictions on disclosure, or (d) that are received by the receiving party from a third party without breach of a nondisclosure obligation.

9.17. Compliance With Laws. Each party shall comply with all applicable laws, rules, regulations, orders, consents and permits in the performance of all of their obligations under this Agreement.

9.18. Authority. The individuals executing this Agreement hereby represent and covenants to the Manager and the other Members that it has the capacity and authority to enter into this Agreement without the joinder of any other person. The individuals executing this Agreement on behalf of any Manager or Member individually represent and warrant that he or she has been authorized to do so and has the power to bind the party for whom they are signing.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

MANAGER

By: _____

MEMBER

Name of Entity: _____
(if applicable)

Signature: _____

Name: _____

Title: _____

BY PURCHASING A MEMBERSHIP INTEREST IN THE COMPANY AND EXECUTING THIS OPERATING AGREEMENT, EACH MEMBER ACKNOWLEDGES AND UNDERSTANDS THE RISK FACTORS ATTACHED TO THE RELATED SUBSCRIPTION AGREEMENT.

SCHEDULE A: LIST OF INITIAL (CLASS A) MEMBERS

Prime Equity, LLC	**%**
	%
	%
	%

EXHIBIT D SPECIAL TAX PROVISIONS

A.1 Definitions. The following terms, which are used predominantly in this Exhibit D, shall, have the meanings set forth below for all purposes under this Agreement.

"***Adjusted Capital Account Deficit***" means, with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (a) the Capital Account shall be increased by the amounts which the Member is obligated to restore under this Agreement or is deemed obligated to restore pursuant to Regulation Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i); and (b) the Capital Account shall be decreased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6). This definition of Adjusted Capital Account Deficit is intended to comply with Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent with that Regulation.

"***Book Depreciation***" means, with respect to any Company asset for each Fiscal Year, the Company's depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such Fiscal Year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined with reference to such beginning Book Value using any permitted method selected by the Company Manager in accordance with Regulation Section 1.704-1(b)(2)(iv)(g)(3).

"***Book Value***" means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross fair market value of such Company asset as of the date of such contribution, as reasonably determined by the Company Manager;

(b) immediately prior to the Distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross fair market value as of the date of such Distribution, as reasonably determined by the Company Manager;

(c) the Book Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Company Manager, after consulting with the Company's accountant, as of the following times:

(i) the acquisition of an additional Membership Interest in the Company by a new or existing Member in consideration of a Capital Contribution of more than a *de minimis* amount;

(ii) the Distribution by the Company to a Member of more than a *de*

minimis amount of property (other than cash) as consideration for all or a part of such Member's Membership Interest in the Company;

(iii) the grant to a service provider of any Interests; and

(iv) the liquidation of the Company within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g);

provided, that adjustments pursuant to clauses (i), (ii) and (iii) above need not be made if the Company Manager reasonably determines that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset 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 Account balances pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and subparagraph (f) of the definition of "Net Income" and "Net Loss"; provided, however, that Book Values shall not be adjusted pursuant to this paragraph (d) to the extent that an adjustment pursuant to paragraph (c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d); and

(e) if the Book Value of a Company asset has been determined pursuant to paragraph (a) or adjusted pursuant to paragraphs (c) or (d) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Loss.

"***Capital Account***" means, with respect to each Member, the Capital Account maintained for such Member in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by the amount of: (i) such Member's Capital Contributions, including such Member's initial Capital Contribution; (ii) any Net Income or other item of income or gain allocated to such Member pursuant to Sections A.2 through A.6; and (iii) any liabilities of the Company that are assumed by such Member or secured by any property distributed to such Member.

(b) Each Member's Capital Account shall be decreased by: (i) the cash amount or Book Value of any property distributed to such Member pursuant to Article 3 and Section 8.2; (ii) the amount of any Net Loss or other item of loss or deduction allocated to such Member pursuant to Sections A.2 through A.6; and (iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(c) In the event Membership Interests are 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 Interests.

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

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Company Manager determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Members), are computed in order to comply with such Regulations, the Company Manager may make such modification. The Company Manager also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

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

"***Company Minimum Gain***" means "partnership minimum gain" as defined in Section 1.704-2(b)(2) of the Regulations, substituting the term "Company" for the term "partnership" as the context requires.

"***Fiscal Year***" means the calendar year, unless the Company is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year.

"***Member Nonrecourse Debt***" means "partner nonrecourse debt" as defined in Regulation Section 1.704-2(b)(4), substituting the term "Company" for the term "partnership" and the term "Member" for the term "partner" as the context requires.

"***Member Nonrecourse Debt Minimum Gain***" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulation Section 1.704-2(i)(3).

"***Member Nonrecourse Deduction***" means "partner nonrecourse deduction" as defined in Regulation Section 1.704-2(i), substituting the term "Member" for the term "partner" as the context requires.

"***Net Income***" and "***Net Loss***" mean, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company's taxable income or taxable loss, or particular items thereof, determined in accordance with Code Section 703(a) (where, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or taxable loss), but with the following adjustments:

(a) any income realized by the Company that is exempt from federal income taxation, as described in Code Section 705(a)(1)(B), shall be added to such taxable income or taxable loss, notwithstanding that such income is not includable in gross income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B), including any items treated under Regulation Section 1.704-1(b)(2)(iv)(i) as items described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or taxable loss, notwithstanding that such expenditures are not deductible for federal income tax purposes;

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

(d) any items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted tax basis shall be computed by reference to the property's Book Value (as adjusted for Book Depreciation) in accordance with Regulation Section 1.704-1(b)(2)(iv)(g);

(e) if the Book Value of any Company property is adjusted as provided in the definition of Book Value, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of such taxable income or taxable loss; and

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), 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).

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

"***Regulations***" means the income tax regulations, including any temporary regulations, promulgated under the Code as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

A.2 Allocation of Net Income and Net Loss.

(a) For each Fiscal Year (or portion thereof), except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss or deduction) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section A.3, the Capital Account balance of each Member, immediately after making such allocations, is, as nearly as possible, equal to (i) the Distributions that would be made to such Member pursuant to Article IX if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Book Value of the assets securing such liability), and the net assets of the Company were

distributed, in accordance with Article IX, to the Members immediately after making such allocations, minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets; provided, however, that for purposes of clause (i) above, each Fiscal Year the Company Manager shall determine the manner in which Distributions were or will most likely be made to the Members pursuant to Article IX.

(b) Except as provided below, no Net Loss shall be allocated to any Member pursuant to Section A.2(a) if the allocation causes the Member to have an Adjusted Capital Account Deficit or increases the Member's Adjusted Capital Account Deficit. All Net Loss in excess of the limitations set forth in this Section A.2(b) shall be allocated to the other Members until each Member is subject to the limitation of this Section A.2(b), and thereafter, in accordance with the Members' Percentage Interests. If any Net Loss is allocated to a Member because of this Section A.2(b), then all subsequent Net Income shall be allocated to the Members on a pro rata basis based on Net Loss allocated to them pursuant to this Section A.2(b) until each Member has been allocated an amount of Net Income pursuant to this Section BA2(b) equal to the Net Loss previously allocated to that Member under this Section A.2(b).

A.3 Regulatory and Special Allocations. Notwithstanding the provisions of Section A.2:

(a) If there is a net decrease in Company Minimum Gain (determined according to Regulations Section 1.704-2(d)(1)) during any Fiscal Year, each Member shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section A.3(a) is intended to comply with the "minimum gain chargeback" requirement in Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Nonrecourse Deductions shall be allocated in the manner required by Regulations Section 1.704-2(i). Except as otherwise provided in Regulations Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, each Member that has a share of such Member Minimum Gain shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain. Items to be allocated pursuant to this paragraph shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section A.3(b) is intended to comply with the "minimum gain chargeback" requirements in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible. This Section A.3(c) is intended to comply with the qualified income offset requirement in Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted

consistently therewith.

(d) The allocations set forth in paragraphs (a), (b) and (c) above (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under Code Section 704. Notwithstanding any other provisions of this Exhibit D (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating Net Income and Net Loss among Members so that, to the extent possible, the net amount of such allocations of Net Income and Net Loss and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

(e) The Company and the Members acknowledge that allocations like those described in Proposed Regulation Section 1.704-1(b)(4)(xii)(c) ("Forfeiture Allocations") result from the allocations of Net Income and Net Loss provided for in this Exhibit D. For the avoidance of doubt, the Company is entitled to make Forfeiture Allocations and, once required by applicable final or temporary guidance, allocations of Net Income and Net Loss will be made in accordance with Proposed Regulation Section 1.704-1(b)(4)(xii)(c) or any successor provision or guidance as may be reasonably determined by the Company Manager.

A.4 Tax Allocations.

(a) Subject to Section A.4(b) through Section A .4(e), all income, gains, losses and deductions of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses and deductions among the Members for computing their Capital Accounts, except that if any such allocation for tax purposes is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses and deductions shall be allocated among the Members for tax purposes, to the extent permitted by the Code and other applicable law, so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) and any permitted method set forth in Regulation Section 1.704-3 that is selected by the Manager, so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value.

(c) If the Book Value of any Company asset is adjusted pursuant to Regulation Section 1.704-1(b)(2)(iv)(f) as provided in clause (c) of the definition of Book Value, subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value in the same manner as under Code Section 704(c).

(d) Allocations of tax credit, tax credit recapture and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Manager taking into account the principles of Regulations Section 1.704-1(b)(4)(ii).

(e) The Company shall make allocations pursuant to this Section A.4 in accordance with any permitted method set forth in Regulation Section 1.704-3 that is selected by

the Company Manager.

(f) Allocations pursuant to this Section A.4 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 Loss, Distributions or other items pursuant to any provisions of this Agreement.

A.5 Allocations in Respect of Transferred Interests. In the event of a Transfer of Interests during any Fiscal Year made in compliance with the provisions of the Agreement, Net Income, Net Loss and other items of income, gain, loss and deduction of the Company attributable to such Interests for such Fiscal Year shall be determined using the interim closing of the books method or such other permissible method selected by the Company Manager.

A.6 Curative Allocations. In the event that the Company Manager determine, after consultation with counsel experienced in income tax matters, that the allocation of any item of Company income, gain, loss or deduction is not specified in this Exhibit D (an "Unallocated Item"), or that the allocation of any item of Company income, gain, loss or deduction hereunder is clearly inconsistent with the Members' economic interests in the Company (determined by reference to the general principles of Regulations Section 1.704-1(b) and the factors set forth in Regulations Section 1.704-1(b)(3)(ii)) (a "Misallocated Item"), then the Company Manager may allocate such Unallocated Items, or reallocate such Misallocated Items, to reflect such economic interests; provided, that no such allocation will be made without the prior consent of each Member that would be adversely and disproportionately affected thereby; and provided, further, that no such allocation shall have any material effect on the amounts distributable to any Member, including the amounts to be distributed upon the complete liquidation of the Company.

A.7 Discretion Regarding Elections. Any elections or other decisions relating to the allocations under this Exhibit D, the Member's Capital Accounts or any other elections provided for in the Code or other applicable law shall be made by the Company Manager.