**SKK VENTURES QP, LLC**

**A Delaware Limited Liability Company**

**LIMITED LIABILITY COMPANY AGREEMENT**

**This is not an offer to sell or a solicitation of an offer to buy any interest in the Fund in any jurisdiction to any person to whom it is unlawful to make such an offer or sale.**

This Agreement (this “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and among SKK Ventures QP Manager, LLC, a Delaware limited liability company (the “Manager”), and such persons who become Members in accordance with the terms hereof and who have not ceased to be Members (the “Class A Members”; and, together with the Manager in its capacity as a Class B Member, the “Members”).

All capitalized terms used in this Agreement, unless otherwise defined, are defined in Appendix I attached hereto.

# General Provisions

## **Formation of Fund/Rights and Obligations of the Members**. The Fund was formed as a limited liability company under the Delaware LLC Act by filing the Certificate with the Delaware Secretary of State. The Members hereby direct the Manager promptly to file or record to file or record any additional, supplemental or amended Certificate and like documents as the Manager shall deem necessary or advisable in accordance herewith. The rights and obligations of any Member shall be determined pursuant to the Delaware LLC Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provisions, this Agreement shall control to the extent permitted by the Delaware LLC Act.

## **Fund Name**. The name of the Fund is “SKK Ventures QP, LLC”

## **Term of Fund**. The Fund began on the date that the Certificate was filed with the Delaware Secretary of State pursuant to the Delaware LLC Act. The Fund shall continue indefinitely; provided, however, that the Fund shall be terminated and liquidated forthwith upon the occurrence of any one of the events set forth in Section 15.1.

## **Place of Business**. The Fund’s principal place of business and executive offices shall be the offices of the Manager, which are located at c/o Shepherd Kaplan Krochuk, LLC, 125 Summer Street, 22nd Floor, Boston, Massachusetts 02110, or elsewhere as the Manager may from time to time determine. The Fund may have more than one office as may from time to time be determined by the Manager.

## **Agent for Service of Process**. The agent for service of process of the Fund in Delaware shall be Corporation Service Company, whose address is: 251 Little Falls Drive, Wilmington, Delaware 19808. The Manager may change such agent for service of process or such address from time to time in the manner provided by applicable law.

# Objectives and Activities of the Fund

## **Objectives**.

### The primary objective of the Fund is to pursue capital appreciation by investing in Financial Instruments issued by operating companies engaged in certain sector groups determined from time to time by the Manager in its sole discretion. The general objectives of the Fund are to buy, sell, hold and otherwise invest in Financial Instruments and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments held or owned by the Fund and received in exchange or with respect thereto.

### In pursuing its primary and general objectives, the Fund may enter into, make and perform all contracts and other undertakings and engage in all activities and transactions, as the Manager may consider necessary or advisable to carry out the foregoing purposes, including:

#### Acquire long positions or short positions in Financial Instruments, and make purchases or sales increasing, decreasing, covering and liquidating such positions;

#### Borrow or raise monies and obtain letters of credit without limitation as to amount, and secure the payment of any obligation of the Fund by mortgage on, or hypothecation or pledge of, all or any part of the property of the Fund; and

#### Enter into credit, deposit and custodian agreements with banks, securities brokerage firms, futures commission merchants and other financial institutions (whether or not affiliated with the Fund or the Manager), open, maintain and close bank, brokerage and other accounts and draw checks or other orders for the payment of money or the delivery of instruments.

### The Fund may engage in these activities directly or indirectly by investing in an investment entity, such as a so-called master fund, that may but is not required to be an Affiliate of the Manager.

### All property owned by the Fund shall be owned by the Fund as an entity, and no Member, individually, shall have any ownership interest in such property.

## **Other Activities**. In addition to pursuing the objectives of the Fund as described in Section 2.1, the Fund may engage in any lawful act or activity for which limited liability companies may be formed under the Delaware LLC Act, and any and all activities necessary or incidental thereto.

# Manager & Management of the Fund

## **No Authority in Limited Management of the Fund**. The Members shall take no part in the management or control of the Fund’s business and shall have no authority to act for or bind the Fund.

## **Initial Manager**. The Manager is the sole manager of the Fund as of the date hereof.

## **Additional Managers**. The Manager may admit additional managers to the Fund at such times as the Manager shall determine, without the consent of the Class A Members. If at any time there is more than one Manager, the Managers shall be jointly and severally responsible for performing the duties of the Manager hereunder and shall manage the Fund by consensus between or among them, but unless otherwise specifically provided herein, any one Manager acting alone shall have all of the power and authority of the Managers hereunder.

## **Powers and Authority of the Manager**. Subject to the Delaware LLC Act and the terms and conditions of this Agreement, the Manager shall have the exclusive power and authority to manage the business and affairs of the Fund. Without in any way intending to limit the powers and authority of the Manager, the Manager shall have the right, power and authority on behalf of the Fund (or to delegate any portion of such rights, power and authority) to:

### Provide to the Fund all portfolio management services required by the Fund;

### Select one or more investment managers and/or sub-advisers, each of whom may be an Affiliate of the Manager, and pursuant to an investment management agreement by and among the Fund, the Manager and such investment manager, on such terms as the Manager shall determine, delegate to such person the obligation to provide all or any portion of the portfolio management services required by the Fund, as well as from time to time assign values to the assets and liabilities of the Fund in accordance with Section 3.4(j); provided, that (i) nothing herein shall require the Manager to select a person to serve as investment manager or sub-adviser, and (ii) all compensation paid to such person for performing such services shall be paid by the Manager from the amounts received by the Manager pursuant to Section 4.1 rather than by the Fund pursuant to Section 4.2;

### Cause the Fund to incur any and all fees and expenses as described in Sections 4.1, 4.2, and 5.2;

### Acquire and enter into any contract of insurance that the Manager determines is necessary or appropriate for the protection of the Fund and the Manager or for any purpose convenient or beneficial to the Fund;

### Employ persons, whether full time or part time, in the operation and management of the business of the Fund, on such terms and for such compensation as the Manager shall determine, regardless of whether or not such persons also may be employed by the Manager or its Affiliates;

### File, conduct and defend legal proceedings of any form, including proceedings against Members, and to compromise and settle any such proceedings or any claims, including claims against Members, on whatever terms deemed appropriate by the Manager;

### Maintain margin accounts with brokers, pledge securities for loans and, in connection with any such pledge, effect borrowings from brokers or banks in such amounts as may be determined from time to time; and

### Open brokerage, bank and other accounts and, to the extent that funds are not invested, to deposit and maintain such funds in the name of the Fund in such accounts and to temporarily invest such funds in short-term U.S. government obligations, certificates of deposit, commercial paper and other money market instruments, including repurchase agreements with respect to such obligations, and money market funds; provided, however, that except as expressly provided herein, the Fund’s assets shall not be commingled by the Manager or an Affiliate of the Manager with the assets of any other person or entity;

### Transact business through brokers and dealers and other persons selected by the Manager in its sole discretion, and in selecting such brokers, dealers and other persons, determine the compensation payable to such persons, taking into account the value of any research and brokerage services or products provided by such persons to the Manager or the Fund; provided that nothing herein shall require the Manager to select any broker or dealer solely because such broker or dealer may be able to provide transactional services at lower rates of compensation;

### Value the assets and liabilities of the Fund in accordance with the terms of this Agreement;

### Acquire and enter into any contract of insurance that the Manager deems necessary or appropriate for the protection of the Fund and the Manager or for any purpose convenient or beneficial to the Fund;

### Serve as the “partnership representative” of the Fund within the meaning of Code section 6223(a) and Section 16 unless another person is designated as the “partnership representative” of the Fund by Members owning in the aggregate more than 50 percent of the Interests held by all Members;

### Select as its accounting year the annual period ending December 31 or any other Fiscal Year as is permitted by the IRS;

### Engage independent accountants, attorneys, administrators, custodians, consultants and such other persons as the Manager may deem necessary or advisable;

### Establish and maintain for the conduct of Fund affairs one or more offices and in connection therewith rent or acquire office space, engage personnel, whether part time or full time, and do such other acts and incur such expenses as the Manager may deem necessary or advisable in connection with maintenance or administration of such office;

### Prepare (or cause to be prepared), execute, acknowledge and/or deliver any and all instruments to effectuate the business of the Fund, including annual and/or interim reports, a copy of which shall be delivered to each Member, as provided in Section 3.11(c) and Section 3.11(d);

### Establish such reserves as the Manager shall, in its reasonable discretion, deem appropriate to pay current and future, definite, contingent and possible obligations of the Fund;

### Require a provision in any Fund contract stating in substance that the Manager shall not have any personal liability therefore, but that the person or entity contracting with the Fund is to look solely to the Fund and its assets for satisfaction; and

### Do any act, engage in any activity or execute any agreement of any nature, necessary or incidental to the accomplishment of the purposes of the Fund in accordance with the provisions of this Agreement, and all applicable federal, state and local laws and regulations.

## **Parallel Funds**. The Manager or its Affiliates may form and serve as the general partner (or in a similar management role) of one or more investment vehicles organized to accommodate the tax, regulatory or other special needs of investors (“Parallel Funds”). The limited liability company agreement of any Parallel Fund may contain terms that differ materially from the terms of this Agreement. Upon each purchase of Financial Instruments (other than short-term obligations such as money market instruments) by the Fund, the Manager shall use commercially reasonable efforts to cause any Parallel Fund to invest on the same terms and conditions as the Fund (subject to adjustment by the Manager in its sole discretion); provided, however, that a Parallel Fund shall not be required to make any such investment in a Financial Instrument if (a) the Manager receives from the issuer thereof a written notice to the effect that the issuer will not permit such Parallel Fund to invest on the same terms as the Fund, or (b) such investment would violate the terms of the governing agreement of any such Parallel Fund.

## **Investment Opportunities**. The allocation of investment opportunities among the Fund and other clients and accounts of the Manager or any of its Affiliates shall be determined in accordance with policy established by the Manager or its Affiliates, as in effect from time to time. Notwithstanding the foregoing, this Agreement shall not: (a) require the Manager, any Affiliate of the Manager, or any manager, member, general partner, director, officer, shareholder, or partner of any of the Manager or any of its Affiliates to offer the Fund any investment opportunity that the Manager reasonably believes is not of a kind suitable for investment by the Fund or is inconsistent with the Fund’s objectives; (b) otherwise limit or restrict any of such persons from buying, selling, investing in or otherwise dealing with any Financial Instruments or other investments; or (c) otherwise limit or restrict any of such persons from engaging in business with, having investment responsibilities for, rendering investment banking, commercial banking or investment or other advisory services to, performing other services for or collecting fees from, any person.

## **Devotion of Time and Resources**. The Manager shall devote so much of its time and efforts to the affairs of the Fund as may, in its judgment, be necessary to accomplish the purposes of the Fund. Notwithstanding any of the foregoing, nothing herein shall (a) require the Manager to devote its full time or resources to the business of the Fund; or (b) subject to the requirements of Section 3.6, prohibit the Manager from buying or selling Financial Instruments for its own account, including the same Financial Instruments as are purchased, sold or held by the Fund.

## **No Prohibition Against Other Business Ventures**. Any of the Manager and its Affiliates may engage and hold interests in other business ventures of every kind and description for its own account, including other collective investment funds similar to the Fund, whether or not such business ventures are in direct or indirect competition with the Fund, and whether or not the Fund or any of the Members also has an interest therein. Any of the Manager and its Affiliates may serve for compensation as a director, officer, employee, or consultant of any Portfolio Entity or any Affiliate of a Portfolio Entity. Nothing in this Section 3.8 or in Section 3.7 shall require any person to have to account to the Fund or any Member for any profits or other benefits derived from any such activity, or impose any obligation on any person to offer any interest in any such activity to the Fund or any Member.

## **Consequences of Other Activities**. The Members hereby acknowledge that the Manager may be prohibited from taking action for the benefit of the Fund because: (a) the Manager acquired confidential information or incurred an obligation in connection with an outside activity permitted of the Manager by this Agreement; (b) an Affiliate, agent, shareholder, member or employee of the Manager serves as an officer or director of a company in which the Fund has invested; or (c) in connection with activities undertaken by the Manager, any of its shareholders, members, managers, employees or Affiliates prior to the date hereof. In addition to the provisions of Section 5.1, no person shall be liable to the Fund or any Member for any failure to act for the benefit of the Fund for one or more of the reasons described in the preceding sentence.

## **Duty to Maintain Records of Names, Addresses, Interests of the Members**. The Manager shall maintain at all times records reflecting the name, address and Interest of each Member. Such records shall be kept on file at all times at the principal place of business of the Fund. Any Member that intends for the Fund to change its address on the records of the Fund shall notify the Manager in writing with its request and, except if such request is unreasonable, the Manager promptly shall take such action as is necessary or desirable to change the records of the Fund as requested.

## **Duty to Keep Books, Financial and Tax Reports**

### At all times during the existence of the Fund, the Manager shall keep true and complete records and books of account, in which each transaction of the Fund shall be entered fully and accurately. The Manager has the power, in its sole and absolute discretion, to delegate some or all of the administrative bookkeeping functions relating to the Fund to an administrator or other agent, which may be the Fund’s independent auditors.

### Following each Capital Contribution, withdrawal or distribution as contemplated by this Agreement, the Manager shall cause the Fund’s records to reflect accurately such Capital Contribution, withdrawal or distribution.

### The Manager shall cause to be prepared and distributed to each Member following each Fiscal Year an annual financial statement prepared in accordance with GAAP and audited by an independent certified public accounting firm. The Manager shall cause to be prepared and filed all federal, state and local income, franchise, gross receipts, payroll and other tax returns that the Fund is obligated to file.

### Copies of all Fund tax returns, information returns or reports shall be available to all Members after the close of the Fiscal Year at the offices of the Fund. Copies of the information for each Member to prepare its income tax returns shall be distributed to such Member after the close of the Fiscal Year. The Manager may agree to provide certain Members with additional information on the underlying investments of the Fund, as well as heightened access to the Manager and its employees for relevant information.

## **Actions of Manager**. The Manager is authorized, directed and empowered to act individually on behalf of the Fund, and in accordance therewith, to execute all documents and instruments on behalf of the Fund. Third parties may rely on execution of any document on behalf of the Fund by the Manager.

# Fees and Expenses

## **Management Fee**. In addition to the allocations and distributions to the Manager in its capacity as a Member, the Fund will pay a management fee to the Manager, which may be paid in cash or kind as determined by the Manager (the “Management Fee”). The Management Fee shall be an upfront assessment equal to 8 percent of each Capital Contribution made by an investor in the Fund, other than by the Manager or any Affiliate of the Manager. The Management Fee with respect to a Member shall be deemed earned in full by the Manager on the date the Member’s Capital Contribution is made, and is non-refundable irrespective of the duration of the Member’s association with the Fund, the disposition of the Fund’s assets, the occurrence of an event described in Section 15.1(a), the Transfer of the Member’s Interests, or otherwise. The Management Fee is nonrecurring with respect to each Capital Contribution made by a Member.

## **Expenses**

### The Fund shall bear all costs and expenses incurred by the Fund in the purchase, holding, monitoring, redemption, sale, exchange or other disposition of Financial Instruments (whether or not ultimately consummated) or otherwise in its operations, including private placement fees, finder’s fees, travel (and related expenses), interest on and fees and expenses arising out of borrowed money, property taxes on investments, including documentary, recording, stamp and transfer taxes, costs and expenses incurred for research, due diligence and other similar professional services (including third-party professional or other consulting fees and expenses), brokerage fees or commissions, underwriting commissions and discounts, custodian or trustee fees, administrator or similar record keeping fees, or other similar charges (including any merger fees payable to third parties), legal, audit, accounting, investment banking, appraisal and consulting fees, costs and expenses relating to investments or proposed investments, taxes applicable to the Fund on account of its operations, fees incurred in connection with the maintenance of bank or custodian accounts, and all expenses incurred in connection with the registration of the Fund’s securities under applicable securities laws or regulations.

### The Fund shall also bear expenses incurred by the Manager in its capacity as the Partnership Representative, the cost of liability and other premiums for insurance protecting the Fund, the Manager, any investment manager, and their respective partners, members, shareholders, managers, managing directors, officers, directors, trustees, employees, agents or affiliates in connection with the activities of the Fund, all out-of-pocket expenses associated with Fund communications with Members, including preparation and distribution of annual or other reports to the Members, costs associated with Fund meetings, all legal, regulatory, compliance audit, accounting, tax, consulting and professional services fees and expenses (including tax preparation) relating to the Fund and its activities.

### The Manager shall bear all organizational costs, fees, and expenses incurred by or on behalf of the Manager or its Affiliates in connection with the formation and organization of the Fund and the Manager (including the definitive agreements related thereto), including legal and accounting fees and all expenses incident thereto.

### The Fund shall bear all organizational fees and expenses incurred by or on behalf of the Manager or any of its Affiliates in connection with the formation, organization, operation and liquidation of any Liquidating Trust and any special purpose investment vehicles provided for in this Agreement.

### The Fund shall bear all liquidation costs, fees and expenses incurred by the Manager (or its designee) in connection with the liquidation of the Fund or any series of the Fund, and Manager at the end of the Fund’s and Manager’s respective terms, including legal and accounting fees and expenses and the cost of insurance against contingent or unknown liabilities.

### The Manager and/or its Affiliates shall bear all normal operating expenses incurred in connection with the management of the Fund, the Manager and its Affiliates, except for those expenses borne by the Fund as expressly set forth above and elsewhere herein. Such normal operating expenses to be borne by the Manager and/or its Affiliates shall include expenditures relating to the investigation and evaluation of potential investments for the Fund, as well as expenditures on account of salaries, wages, and other expenses of employees of the Manager and its Affiliates, overhead and rentals payable for space used by the Manager, its Affiliates and the Fund related to investment and regulatory activities.

### Each of the Fund and the Manager (or its designee) agrees to reimburse the other as appropriate to give effect to the provisions of this Section 4.2 in the event that either such party pays an obligation that is properly the responsibility of the other. The Manager may waive reimbursement from the Fund, in part or in full and in its sole discretion, in the event that the Manager pays an obligation that would otherwise be the responsibility of the Fund.

### The Manager may deduct a percentage of the amount invested by a Class A Member in the Fund to pay sales fees or charges, on a fully disclosed basis, to a broker-dealer, placement agent or other person based upon the Capital Contribution of such Class A Member introduced to the Fund by such broker-dealer, placement agent, or other person. Any such sales fees or charges would (i) be assessed against the referred Class A Member, (ii) not be a Capital Contribution of the Class A Member, and (iii) reduce the amount actually invested by such Class A Member in the Fund.

### The Manager shall waive its right to reimbursement for Fund expenses paid by it (directly or through an affiliate other than the Fund) up to the amount of the total aggregate Management Fee paid to the Manager by the Fund. The Fund expense reimbursement waived by the Manager pursuant to this Section 4.2(i) will be allocated to each series Interest held each Member based on the portion of the Management Fee allocated to such Interest (taking into account any waivers of Management Fee amounts). For the avoidance of doubt, the Manager will continue to have a right to reimbursement for any Fund expenses paid by the Manager (directly or through an affiliate other than the Fund) allocable to any Member’s Interest in any series in excess of the aggregate amount of Management Fee allocated to such Interest.

# Liability and Indemnification

## **Liability**.

### The Manager and its Affiliates shall not be liable to the Fund or the Members for any action or inaction in connection with the business and affairs of the Fund, unless such action or inaction is determined by a final, non-appealable court of competent jurisdiction to constitute gross negligence to the material detriment of the fund or criminal fraud by the Manager. It shall be conclusively presumed and established that the Manager acted in good faith if any action is taken, or not taken, by it on the advice of legal counsel or other independent outside consultants; provided, that the Manager did not act with gross negligence in the selection of such counsel or consultants.

### No Member shall be personally liable for the expenses, liabilities, or obligations of the Fund. Notwithstanding the foregoing, each Member shall be required to pay (i) to the Fund, at such times and subject to the conditions set forth herein, all amounts that such Member has agreed to pay in respect of its Capital Contributions and to deliver such other amounts it is obligated to pay over to the Fund pursuant to this Agreement, (ii) such amounts as required by the Delaware LLC Act.

### A failure to observe any formalities or requirements of this Agreement, the Certificate, or the Delaware LLC Act shall not be grounds for imposing personal liability on the Manager or any Member for any liability of the Fund.

## **Indemnification**. The Fund will indemnify and hold harmless the Manager and its Affiliates from and against any and all claims, actions, demands, losses, costs, expenses (including attorneys’ fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding relating to any action or inaction by any of them in connection with the business and affairs of the Fund (including any judgment, settlement, reasonable attorneys’ fees and other costs or expenses incurred in connection with the defense of any actual or threatened action or proceeding); provided, that the party against whom the claim is made or legal proceeding is directed has not been found liable of gross negligence to the material detriment of the fund or found guilty of criminal fraud, in either case as determined by a final non-appealable court of competent jurisdiction. Any indemnity under this Section 5.2 shall be paid from and to the extent of Fund assets only, and only to the extent that such indemnity does not violate applicable federal and state laws. The Fund shall, in the discretion of the Manager, advance amounts and/or pay expenses as incurred in connection with the indemnification obligation herein, including to the Manager and/or its Affiliates. In the event this indemnification obligation shall be deemed unenforceable, whether in whole or in part, such unenforceable portion shall be stricken or modified so as to give effect to this paragraph to the fullest extent permitted by law.

## **Acting as an ERISA Fiduciary**. If, to the extent, and at such times as, any assets of the Fund are deemed to be “plan assets” within the meaning of ERISA of any Member that is an employee benefit plan governed by ERISA, the Manager shall be, and hereby acknowledges that it shall be considered to be, a fiduciary within the meaning of Section 3(21) of ERISA as to that Member. In such an event, or if any Affiliate of the Manager, is ever held to be a fiduciary of any Member, then, in accordance with Sections 405(b)(1), 405(c)(2) and 405(d) of ERISA, the fiduciary responsibilities of that person shall be limited to the person’s duties in administering the business of the Fund, and the person shall not be responsible for any other duties to such Member, specifically including evaluating the initial or continued appropriateness of this investment in the Fund under Section 404(a)(1) of ERISA.

## **Liability and Indemnification of Investment Managers and Sub-Advisers**. Sections 5.1, 5.2, and 5.3 shall also apply to (a) any person selected by the Manager pursuant to Section 3.4(b) to serve as the investment manager or sub-adviser with respect to some or all Fund assets, and (b) any person appointed to serve as the “partnership representative” pursuant to Section 3.4(l).

# Manager Resignations, Withdrawals and Transfers

## **Voluntary Withdrawals and Resignations**. The Manager shall not be permitted to voluntarily withdraw or resign as the manager of the Fund, except upon no less than 30 days’ prior written notice to all Members or in connection with a transfer under Section 6.3.

## **Involuntary Withdrawals**. In the event of an Involuntary Withdrawal, the Manager or the Manager’s trustee, receiver or assignee shall have none of the rights and powers of a Manager hereunder, and shall have no authority to act on behalf of the Fund or have any voice in the management and operation of the Fund, except as provided in Section 15.2.

## **Transfer of Interests Held by Manager**. The Manager shall have the right to transfer its Interests as the manager of the Fund to any other person, without the consent of Members. Upon receipt of such Interests, such Person shall be a manager of the Fund and the Manager shall cease to be a manager of the Fund.

## **Appointment of Substitute Manager by Members**. In an event the Manager withdrawals, resigns or Involuntarily Withdrawals as the manager of the Fund as set forth in Section 6.1 or Section 6.2, and no manager of the Fund remains, the Class A Members shall have the right, within 90 days after such event, by affirmative vote of a Majority of Interests of Class A Members voting collectively to appoint a substitute manager.

## **Transferee/Substitute Manager Requirements**. The acceptance as a manager of the Fund of any person that has receive Interests pursuant to Section 6.3, or who has been appointed as a manager pursuant to Section 6.4, shall become effective only when such person has executed and acknowledged any and all instruments that are necessary or appropriate to effect such admission of such person, including the written acceptance and adoption by such person of the provisions of this Agreement and, if required by the Delaware LLC Act, an amendment of the Certificate. Any person that has received Interests pursuant to Section 6.3, upon executing and acknowledging any and all such instruments, shall assume the status of and shall have all of the rights, powers and obligations that the Manager possessed as manager prior to its withdrawal, resignation or Involuntary Withdrawal from the Fund.

# Member Interests

## **Authorized Member Interests**.

### Except as provided in Section 7.1(b), the Fund is authorized to issue one or more series of Interests to which shall be allocated all profits and losses of the Fund relating to a Portfolio Interest. Each series of Interests shall comprise 2 classes, which shall be designated as “Class A Interests” of the specific series and “Class B Interests” of the specific series. At the time a series of Interests is authorized, the Manager shall determine the terms and conditions applicable to such series and each such class. The Manager shall have the power to issue the authorized Interests on the terms and conditions determined by the Manager as provided in the immediately preceding sentence without an amendment of this Agreement. References in this Agreement to Interests of a specific series include all classes of Interests of such series.

### Member’s Suitability Requirements. Class A Members of any series will be limited to persons who are (i) both Accredited Investors and Qualified Purchasers or (ii) who are Knowledgeable Employees or companies owned exclusively by Knowledgeable Employees or persons who acquire securities in accordance with Rule 3c-6 under the 1940 Act which were originally acquired by one or more Knowledgeable Employees. Only investors in the Class A Interests of a series who demonstrate to the satisfaction of the Manager that they have met those suitability standards in (i) or (ii) of this Section 7.1(b), as well as any the ability to afford a complete loss of their investment, and who have met all other conditions required by the Manager in its sole discretion, will be admitted as Class A Members of such series.

## **Admission of Members**. Subject to Section 7.1(b), the Fund may admit a person as a Class A Member with respect to a specific series, provided, that such person has: (a) completed and executed a Subscription Agreement with respect to such series, and the Manager has accepted that Subscription Agreement with respect to such series on behalf of the Fund; (b) paid to the Fund its Capital Contribution with respect to such series as provided in Section 8.2; and (c) provided such documentation and other instruments relating to such series as requested by the Manager. No person shall be a Class A Member unless and until the Manager consents to the admission of such person.

## **Member Loans**. No Member shall be obligated to make any loan to the Fund.

## **Rights of Members to Inspect Books, Records, and Fund Documents**. Upon reasonable advance written notice and during reasonable business hours, a Class A Member may inspect and copy, at the Class A Member’s expense and solely for a purpose reasonably related to the Member’s interest as a Class A Member, the records of the Fund required to be maintained pursuant to Section 18-305 of the Delaware LLC Act and any financial statements maintained by the Fund. Any such inspection must be in good faith without any intent to damage the Fund or any of its Class A Members in any manner. Copies of this Agreement and all amendments hereto shall be furnished to each Class A Member upon request, provided that the Manager may redact any portion of this Agreement or any amendment to conceal the name or names of any Class A Member.

## **Restriction on Other Activities**. Class A Members may engage and hold interests in business ventures of every kind and description for their own accounts, including business ventures which are, directly or indirectly, in competition with the Fund and whether or not the Fund or any of the Class A Members also has an interest therein. Neither the Fund nor any of the Class A Members shall have any rights in such independent business ventures by virtue of this Agreement.

## **Rights as to Dissolution**. The Class A Members shall have no right or power to cause the dissolution and winding up of the Fund by court decree or otherwise or to withdraw or reduce their Capital Contributions, except as set forth in the Certificate and this Agreement. No Class A Member shall have the right to bring an action for partition against the Fund and each Class A Member hereby waives any right to partition of the Fund’s property.

## **Consent by Class A Members in Lieu of Meeting**. Any action required by this Agreement or the Delaware LLC Act to be taken at any regular or special meeting of the Class A Members, whether voting as a class, series, or collectively, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Class A Members holding a Majority in Interests of the such class, series, or collectively, or otherwise as specified in this Agreement.

## **Constructive Consent by Members**. In the event the Manager requires the consent of one or more Class A Members of the Fund, whether as a Class A Member of a class, series, or collectively, in order to take action (including approving amendments to this Agreement), and written notice of such action is mailed to any such Class A Members (certified mail, return receipt requested), those Class A Members not affirmatively objecting in writing within the time specified in such notice (which time shall be not less than 15 days) shall be deemed to have consented to the proposed action set forth in the Manager’s notice.

# Capital Accounts & Capital Contributions

## **Capital Accounts.**

### The Fund shall establish and maintain for each Member an individual capital account with respect to each series of Interests held by the Member (each, a “Capital Account”) for the purpose of allocating the Net Profits and Net Losses as provided in this Agreement.

### Each Member’s Capital Account with respect to a specific series shall consist of the Member’s original Capital Contribution with respect to such series, if any, and (a) increased by any additional Capital Contributions with respect to such series, the Member’s share of any income or gain with respect to such series that is allocated to the Member pursuant to this Agreement, and the amount of any Fund liabilities with respect to such series that are assumed by the Member or that are secured by any Fund property distributed to the Member, and (b) decreased by the amount of any distributions to or withdrawals by the Member with respect to such series, the Member’s share of expense or loss with respect to such series that is allocated to the Member pursuant to this Agreement, and the amount of any of the Member’s liabilities that are assumed by the Fund or that are secured by any property contributed by the Member to the Fund with respect to such series.

### This Section 8.1 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b)(2)(iv), and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations, the Manager may make such modification, provided that it is not likely to have more than an insignificant effect on the total amounts distributable to any Member pursuant to this Agreement.

## **Capital Contributions**.

### Class A Interests.

#### Class A Interests of each series will be issued to investor Members in exchange for their Capital Contributions.

#### All Capital Contributions shall be made in the form of a wire transfer, bank check, cash, other immediately available funds, or other assets explicitly accepted by the Manager, and shall be made by a Member concurrently with the execution of the Member’s Subscription Agreement relating to the Capital Contribution. If a Class A Member of a specific series fails to make the entire Capital Contributions specified in the Subscription Agreement relating to such series and Counterpart Signature Page within the time prescribed therein, no Interest of such series shall be issued to such prospective Class A Member, and such prospective Class A Member shall indemnify and hold the Fund and the other Members harmless from any loss, cost, or expense, including reasonable attorney fees caused by the failure to make the initial Capital Contribution.

#### The Manager shall have the right, but not the obligation, to contribute capital to the Fund with respect to any series, through the purchase of Class A Interests of such series, in the form of a Capital Contribution relating to such series.

#### Holders of any Class A Interest shall be entitled to vote only on such matters as expressly provided in this Agreement.

### Class B Interests. Class B Interests of a series will be issued to the Manager as partial consideration for its services as manager of the Fund. The Manager will not be required to make any capital contribution to the Fund with respect to the Class B Interests, and its initial Capital Account balance with respect to the Class B Interests of the initial series of Interests will be zero.

## **Rights Regarding Capital Contributions**.

### No Member shall be entitled to interest on any Capital Contribution, and no Member shall have the right to withdraw or to demand the return of all or any part of its Capital Contribution, except as specifically provided in this Agreement.

### No Class A Member of Interests of a specific series shall have any preemptive or other rights to Interests of any class of any other series.

### No Member shall be required to make any additional Capital Contribution otherwise as provided in the Member’s Subscription Agreement.

### Under circumstances requiring a return of any Capital Contribution, no Member shall have the right to receive property, other than cash, except as may be specifically provided herein.

### No Member shall have personal liability for the repayment of the Capital Contribution of any Member or any obligation to make loans or advances to the Fund, including restoration of a deficit Capital Account as provided in Section 8.5.

## **Book-Up of Fund Assets.** The book value of all Fund assets will be adjusted, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f), to equal their respective gross fair market values, as determined by the Manager, as of the following times: (i) the acquisition of an additional interest in the Fund by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Fund to a Member of more than a *de minimis* amount of money or Fund property as consideration for an interest in the Fund; and (iii) the “liquidation” of the Fund within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g).

## **Deficit Capital Accounts**. Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that any Member’s Capital Account has a deficit balance upon the “liquidation” of the Fund within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), such deficit shall not be an asset of the Fund and such Member shall not be obligated to contribute such amount to the Fund to bring the balance of such Member’s Capital Account to zero.

# Allocations

## **Allocations of Net Profits and Net Losses**. The Net Profits and Net Losses of the Fund for each Fiscal Year shall be allocated among the Member’s Capital Accounts *pro rata* as provided in this Section 9.1, subject to the requirements of Section 9.2 and 9.3.

### Each Series Allocated Net Profits shall be allocated to the Members of such series in the following order and priority:

#### First, 100 percent to the Class A Members of such series pro rata in proportion to their respective portions of their Class A Interests of such series held, in an amount equal to

##### the cumulative Series Allocated Net Losses with respect to such series allocated pursuant to Section 9.1(b) for all prior Fiscal Years; minus

##### the cumulative Series Allocated Net Profits of such series allocated to the Class A Members of such series pursuant to this Section 9.1(a)(i) for all prior Fiscal Years; and

#### Second, the remainder, if any, will be allocated to the Members of such series as follows:

##### 80 percent shall be allocated to the Class A Members of such series, pro rata in proportion to their respective Class A Interests held in such series; and

##### 20 percent shall be allocated to the Class B Member of such series.

### Each Series Allocated Net Losses shall be allocated to the Members of such series in the following order and priority:

#### First,

##### 80 percent shall be allocated to the Class A Members of such series, pro rata in proportion to their respective Class A Interests held in such series, and

##### 20 percent shall be allocated to the Class B Member of such series to the extent of any prior Series Allocated Net Profits allocated pursuant to Section 9.1(a)(ii)(B); and

#### Second, 100 percent to the Class A Members of such series pro rata in proportion to their respective portions of their Class A Interests of such series held.

## **Special Capital Account Allocations**.

### Tax Allocations.

#### Subject to Section 9.2(a)(ii), in each Fiscal Year, items of income, deduction, gain, loss or credit that are recognized for income tax purposes shall be allocated among the Members in a manner that reflects equitably amounts credited to or debited against the Capital Account of each partner, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Fund shall establish and maintain records that show the extent to which the Capital Account of each Member comprises, as of the last day of each Fiscal Year, amounts that have not been reflected in the taxable income of such Member. To the extent deemed by the Manager to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Members who have enjoyed the related credits, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Members who have borne the burden of the related debits.

#### Notwithstanding any of the foregoing provisions to the contrary, if a Member withdraws all of its capital during a Fiscal Year, the Manager may elect to make allocations of taxable income and loss as follows:

##### Taxable income may first be allocated to each Member who has withdrawn or been distributed all of such Member’s Capital Account in that Fiscal Year, to the extent that such withdrawal or distribution exceeds such Member’s adjusted tax basis in such Member’s Interest in the Fund immediately prior to such withdrawal or distribution. If more than one Capital Account has been so withdrawn or distributed in full, such allocations, if made, shall be made to the extent of, and in proportion to, such differences;

##### Taxable loss may first be allocated to each Member who has withdrawn or been distributed all of such Member’s Capital Account in that Fiscal Year, to the extent that such Member’s adjusted tax basis in such Member’s Interest in the Fund exceeds that Capital Account immediately prior to such withdrawal or distribution. If more than one Capital Account has been so withdrawn or distributed, such allocations, if made, shall be made to the extent of and in proportion to such differences; and

##### Thereafter, taxable income and loss may be allocated as provided in Section 9.2(a)(i).

#### Any elections or other decisions relating to such allocations, or computations or taxable income, shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement and shall be binding on all Members. Allocations pursuant to this Section 9.2(b) 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 Capital Account or share of Net Profits, Net Losses or other items of any Member, or distributions to any Member, pursuant to any provision of this Agreement.

### **Other Allocation Rules.**

#### If any amount claimed by the Fund to constitute a deductible expense in any Fiscal Year is treated by any federal, state or local taxing authority as a payment made to a Member in such Member’s capacity as a member of the Fund for income tax purposes, with regard to such authority, items of income and gain of the Fund for such Fiscal Year shall first be allocated to such Member to the extent of such payment.

#### All matters concerning the allocation of profits, gains and losses among the Members (including the taxes thereon) and accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Manager in its sole discretion, and the Manager is expressly permitted to use the aggregate method of apportioning taxable gain and loss under Code section 704(b). The Manager’s determination of the foregoing matters shall be final and conclusive as to all parties.

## **Withholding**.

### Any taxes, fees or other charges that the Fund is required to withhold under applicable law with respect to any Member (each, a “Withholding Payment”) shall be withheld by the Fund (and paid to the appropriate government authority) and shall be deducted from the Capital Account of such Member as of the last day of the Fiscal Year (or earlier if the Member withdraws) with respect to which amounts are required to be withheld. Each Member shall indemnify and hold harmless the Fund from and against any and all liability with respect to any Withholding Payments required on behalf of, or with respect to, such Member. A Member’s obligation to so indemnify shall survive the Transfer of such Member’s Interest in the Fund, and the liquidation and dissolution of the Fund or the Member’s Interest therein, and the Fund may pursue and enforce all rights and remedies it may have against each such Member under this Section 9.3.

### Any imputed underpayment within the meaning of Code section 6225 (or any similar provision under state or local law) paid (or payable) by the Fund as a result of an adjustment with respect to any Fund item, including any interest or penalties with respect to any such adjustment (collectively, an “Imputed Underpayment Amount”), shall be treated as if it were paid by the Fund as a Withholding Payment with respect to the appropriate Members. The Manager shall reasonably determine the portion of an Imputed Underpayment Amount attributable to each Member or former Member. The portion of the Imputed Underpayment Amount that the Manager attributes to a Member shall be treated as a Withholding Payment with respect to such Member. The portion of the Imputed Underpayment Amount that the Manager attributes to a former Member of the Fund shall be treated as a Withholding Payment with respect to both such former Member and such former Member’s transferee(s) or assignee(s), as applicable, and the Manager may in its discretion exercise the Fund’s rights pursuant to this Section 9.3 in respect of either or both of the former Member and its transferee or assignee. Imputed Underpayment Amounts treated as Withholding Payments also shall include any imputed underpayment within the meaning of Code section 6225 (or any similar provision under state or local law) paid (or payable) by any entity treated as a partnership for U.S. federal income tax purposes in which the Fund holds (or has held) a direct or indirect interest other than through entities treated as corporations for U.S. federal income tax purposes to the extent that the Fund bears the economic burden of such amounts, whether by law or agreement.

## **Transfer or Issuance of Interests During Fiscal Year**. In the case of the Transfer of a Member’s Interests, the addition of an Additional Member or the issuance of additional Interests at any time other than the end of a Fiscal Year, the distributive share of the various items of income, gain, loss, deduction, credit or allowance of the Fund shall be allocated among the Members to take into account the varying interests of the Members during the Fiscal Year in accordance with Code section 706, using such method as is determined by the Manager.

# Withdrawals

## **Withdrawals, Generally**.

### Interest. No interest shall be paid to any Member on account of its interest in the capital of or on account of its investment in the Fund.

### Withdrawals by the Members. No Member may withdraw any amount from its Capital Account unless such withdrawal is made pursuant to Section 11, Section 15, or with the prior written consent of the Manager. The Manager may permit a Member to withdraw some of all of the amount of its Capital Account balance at any time and/or under any conditions, or it may deny any request of a Member to withdraw, for any reason or no reason in its sole discretion.

## **Required Withdrawal**. The Manager may (a) terminate the Interest of any Member with respect to any series or all series of the Fund at the end of any calendar month, upon at least 10 days’ prior written notice and (b) terminate the Interest of any Member with respect to any series or all series of the Fund at any time upon at least 5 days’ prior written notice, if, among other reasons, the Manager determines that the continued participation of such Member in the Fund might cause the Fund, the Manager, or any Member to violate any law, to cause the Fund to be an “investment company” for purposes of the 1940 Act, or if any litigation is commenced or threatened against the Fund or any Member arising out of, or relating to, the participation of such Member in the Fund.

# Distributions & Valuation

## **Distributions Generally.**

### Determinations and Timing of Distributions. Upon the Fund’s receipt of cash proceeds and other cash receipts (other than Capital Contributions), the Manager shall determine in its sole discretion whether the Fund has (i) cash in an amount sufficient to satisfy (A) all of the Fund’s existing and anticipated obligations to its creditors and (B) the amount of reserves the Manager has determined in its sole discretion are appropriate or necessary in order for the Fund to accomplish the purpose of the Fund, and/or (ii) Financial Instruments which it would be in the best interests of the Fund and the Members to distribute to Members (“Distributable Financial Instruments”). If, prior to the dissolution of the Fund, the Manager determines that the Fund has cash in an amount sufficient as provided in the immediately preceding sentence (“Distributable Cash”) and/or Distributable Financial Instruments, the Manager shall further determine the amount of such Distributable Cash and the portion of such Distributable Financial Instruments that are attributable to each series, and then cause the Fund to distribute such Distributable Cash and/or Distributable Financial Instruments to each Member of such series within a commercially reasonable period in the manner described in Section 11.1(b).

### Apportionment of Distributions. Except as provided in this Section 11, each distribution to each series made pursuant to Section 11.1(a) shall be apportioned among the Members of such series in proportion to the aggregate Capital Account balances of such Members that are attributable to the series.

### Assignment of Right to Receive Distributions.

#### All distributions shall be made only to the Member who, according to the books and records of the Fund, is the holder of record of the Interests in respect of which such distributions are made on the actual date of distribution. Neither the Fund nor the Manager shall incur any liability for making distributions in accordance with this Section 11.1.

#### Notwithstanding the above, a Class B Member shall have the sole right to assign a portion of the distributions (and associated allocations under Section 9.1) attributable to the Class B Interests to another Member. Any such assignment of the allocations and distributions attributable to the Class B Interests shall be set forth in the Member’s signature page hereto (Exhibit A) or via such other writing acceptable to Manager and the assignee Member. If any such assignment is made under this Section all allocations and distributions under this Section 11 with respect to the Class B Interests shall thereafter be made to account for any such assignment.

## **Tax Distributions**. Notwithstanding Section 11.1 to the contrary and prior to any distribution under Section 11.1(a), the Manager may, in its sole and absolute discretion, cause the Fund to distribute Distributable Cash to any Member or Members (including itself) to the extent the Manager determines that amounts actually distributed to such Members are not sufficient for such person (or any of its direct or indirect beneficial owners) to pay when due any income tax or capital gains tax imposed on it by reason of the allocation of taxable income or taxable capital gains pursuant to this Agreement. The maximum amount of any such distribution to any Member within one fiscal year will be the sum of: (i) the product of (A) the Fund’s net taxable ordinary income and net taxable short-term capital gain allocated pursuant to Section 9 to such Member for such ended Fiscal Year multiplied by (B) the highest marginal U.S. federal (and New York state) ordinary income tax rate applicable to individuals plus (ii) the product of (A) the Fund’s net taxable long-term capital gain allocated pursuant to Section 9 to such Member for such ended Fiscal Year multiplied by (B) the highest U.S. federal (and New York state) long-term capital gains tax rate applicable to individuals minus (iii) amounts that have already been distributed to such Member pursuant to this Section 11.2 for such Fiscal Year. No such distribution shall be made to the extent that the Manager determines, in its sole discretion, that funds are not reasonably available for such distribution by virtue of applicable law, contractual obligation or current or future needs of the Fund. Distributions made pursuant to this Section 11.2 shall be treated as an advance and shall be applied against amounts otherwise distributable to the Members pursuant to Sections 11.1(b) or 15.2(b).

## **Other Distribution Rules**.

### Distributable Financial Instruments that are Non-Marketable Securities shall be distributed in a manner consistent with Section 15.5. All other Financial Instruments distributed in kind shall be subject to such conditions and restrictions as the Manager determines are legally required.

### Notwithstanding anything to the contrary contained in this Agreement, the Fund, and the Manager on behalf of the Fund, shall not be required to make a distribution to any Member on account of its interest in the Fund if such distribution would result in a deficit balance in such Member’s Capital Account or result in the violation of the Delaware LLC Act or any other applicable law. In the event that any distribution is prohibited by the preceding sentence, subsequent distributions shall be adjusted (to the extent that any such adjustment would not itself give rise to a violation of such sentence) so that the aggregate amount distributed to each Member in the original and subsequent distributions shall be, to the extent possible, equal to the aggregate amounts that would have been distributed to such Member had adjustments pursuant to this Section 11.3(d) not occurred;

### In the event that any distribution to one or more Members is made in error, the Manager shall be authorized to adjust future distributions, or to recall amounts previously distributed, to the Members in a manner so as to cause the cumulative net distributions made to each Member to be consistent with the cumulative amount that such Member would have received had no such error been made; and

### Notwithstanding Section 11.1(b) to the contrary, distributions of proceeds of liquidation shall be made to the Members pursuant to Section 15.2.

## **Determinations of Fund Asset/Liability Values**

### The value of the Fund’s assets and liabilities shall be determined on an accrual basis of accounting in accordance with GAAP, consistently applied (except that organizational and initial offering expenses of the Fund may, in the Manager’s discretion, be amortized for up to 60 months from the date the Fund commences operations), and the following:

#### No value shall be assigned to goodwill;

#### All accrued debts and liabilities shall be treated as liabilities, including all amounts payable to the Manager that are due or otherwise payable but not yet paid, any allowance for the Fund’s estimated annual audit and legal fees and other operating expenses and any contingencies for which reserves are required;

#### Any accrued allocations of Net Profits that have not yet been reallocated to the Manager’s Capital Account shall be treated as liabilities;

#### Financial Instruments (other than options) that are listed on a national securities, commodities or other exchange, or over-the-counter instruments listed on NASDAQ, shall be valued at their last sales prices on such date or, if no sales occurred on such date, at the “bid” price for a long position and the “ask” price for a short position on such date;

#### Options that are listed on a securities or commodities exchange shall be valued at their last sales prices on the date of determination on the largest securities or commodities exchange (by trading volume) on which such options shall have traded on such date; provided that, if the last sales prices of such options do not fall between the last “bid” and “ask” prices for such options on such date, then such options shall be valued at the midpoint between the last “bid” and “ask” prices for such options on such date;

#### Financial Instruments that are not listed on an exchange or quoted on an over-the-counter market, but for which there are available quotations, shall be valued based upon quotations obtained from market makers, dealers or pricing services;

#### Financial Instruments contributed to the Fund as subscription proceeds shall be treated as if purchased by the Fund at market value on the date of contribution, and Financial Instruments distributed from the Fund as withdrawal proceeds shall be treated as if sold by the Fund at market value on the date of distribution; and

#### Any Fund asset that has no public market, investments in other asset classes, and all other assets of the Fund for which a valuation methodology is not specified in this Agreement, will be valued by the Manager in a manner determined in good faith to reflect its fair value.

### If the Manager determines, in its sole discretion, that the valuation of any asset pursuant to the foregoing does not fairly represent the amount that the Fund would receive if it were to dispose of the asset in an arm’s length transaction to meet anticipated withdrawals, the Manager will value such asset using an amount that it determines in good faith to reflect the asset’s fair value.

### In connection with the determination of the value of any Fund asset, the Manager may consult with and is entitled to rely upon the advice of the Fund’s brokers and any other third parties deemed appropriate by the Manager. In no event and under no circumstances shall the Manager, the Fund’s brokers or such other third parties incur any individual liability or responsibility for any determination made or other action taken or omitted by them in good faith.

### All determinations of value of any asset or liability pursuant to this Agreement, as well as determinations of the net asset value of the Fund or any series of Interests thereof, are conclusive and binding as to all Members.

## Members’ Obligation to Repay or Restore. Except as required by the Delaware LLC Act, Section 15.4, or as otherwise expressly set forth in this Agreement, no Member shall be obligated at any time to repay or restore to the Fund all or any part of any distribution made to it from the Fund in accordance with the terms of this Agreement. If the Delaware LLC Act requires that a Member repay or restore to the Fund any distribution received by such Member from the Fund, the Members hereby agree that such repayment or restoration shall not be accompanied by any interest payments.

# Transfers of Interests

## **Restrictions on Transfer of Interests of Class A Members**

### Except for transfers by will or intestate succession or by operation of law, no Class A Member may Transfer, in whole or in part, such Class A Member’s Interest without the consent of the Manager, which may be given or withheld in the sole and absolute discretion of the Manager and subject to any condition. Notwithstanding the foregoing, any purported Transfer of a Class A Member’s Interests that would cause the termination of the Fund for federal income tax purposes shall be void ab initio.

### In connection with any request for the consent of the Manager to a Transfer of a Class A Member’s Interests, the Manager may request from counsel for the Fund its written opinion (the expenses of which may be allocated to the relevant Class A Member) as to whether proposed Transfer:

#### Would cause the termination of the Fund for federal income tax purposes and/or

#### May be effected without:

##### Registration of the Interest being made under the Securities Act;

##### Violating any applicable state securities or “Blue Sky” law (including investment suitability standards) or the laws of any other jurisdiction;

##### The Fund becoming subject to the 1940 Act; or

##### Violating the Delaware LLC Act.

### The Manager shall be entitled to rely conclusively upon such opinion or opinions in determining whether consent to such Transfer should be given.

### In no event shall the Interest of a Class A Member or any portion thereof be Transferred to a minor or incompetent, unless by will or intestate succession.

### Any Imputed Underpayment Amount that is properly allocable to a transferor of an interest, as reasonably determined by the Manager, shall be treated as a Withholding Payment with respect to the applicable transferee in accordance with Section 9.4. Furthermore, each Member hereby agrees that, following any Transfer of such Member’s interest, such Member shall (i) continue to comply with the provisions of Section 16 notwithstanding such Transfer and (ii) indemnify and hold harmless the Fund and the Manager from and against any and all liability with respect to the transferee’s Withholding Payments resulting from Imputed Underpayment Amounts attributable to the transferor to the extent that the transferee fails to do so..

## **Admission of Substitute Class A Member**

### Subject to the provisions of this Section 12, an assignee of the Interest of a Member (which shall include a Substitute Member) only upon the satisfactory completion of the following:

#### The assignee shall have completed and executed such documents or instruments as the Manager may require in its sole and absolute discretion in order to effect the admission of such person as a Substitute Member;

#### The assignee shall have (A) accepted and agreed to be bound by the terms and provisions of this Agreement (as it may be amended from time to time), (B) expressly assumed all of the obligations of the assignor Class A Member hereunder, (C) represented to the Manager that (I) the assignee’s acquisition of the Interest is made as a principal, for the assignee’s own account, for investment purposes only and not with a view to the resale or distribution of such Interest, and (II) the assignee meets the suitability requirements for investing in the Fund, and (D) covenanted that the assignee will not Transfer such Interest or any fraction thereof to anyone in violation of this Agreement;

#### The assignee shall have complied with all applicable governmental rules and regulations, if any;

#### All costs and expenses incurred by the Fund and the Manager in connection with this Section 12.2 shall be paid by the person or entity seeking to become a Substitute Member or the transferor Class A Member; and

#### The Manager has consented to the admission of the assignee as a Substitute Member, as evidenced by a written document executed by the Manager.

## **Rights of Assignee of Interest**

### Subject to the provisions of Section 12.1, and except as required by operation of law, the Fund shall not be obligated for any purposes whatsoever to recognize the assignment by any Class A Member of such Class A Member’s Interest until the Fund has received notice thereof.

### Any person or entity who is the assignee of all or any portion of the Interest of a Class A Member, but who has not become a Substitute Member, and desires to make a further disposition of such Interest, shall be subject to all the provisions of this Section 12 to the same extent and in the same manner as any Class A Member desiring to make a disposition of such Class A Member’s Interest.

## **Effect of Bankruptcy, Death or Incompetence of a Class A Member**. The bankruptcy of a Class A Member or an adjudication that a Class A Member is incompetent (which term shall include, but not be limited to, insanity), shall not cause the termination or dissolution of the Fund and the business of the Fund shall continue. If a Class A Member becomes bankrupt, the trustee or receiver of such Class A Member’s estate or, if a Class A Member dies, such Class A Member’s executor, administrator or trustee, or, if such Class A Member is adjudicated incompetent, such Class A Member’s committee, guardian or conservator, shall have the rights of such Class A Member for the purposes of settling or managing such Class A Member’s estate or property and such power as the bankrupt, deceased or incompetent Class A Member possessed to dispose of all or any part of such Class A Member’s Interest and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Member.

## **Attachment by Creditors**. If an Interest is subjected to attachment by a creditor, or is assigned for the benefit of any creditor, the Interest obtained by such creditor shall be only that of an assignee, and in no event shall such creditor have the rights of a Class A Member.

## **Assignee**. Subject to Section 12.3(b), if a Class A Member Transfers all or a portion of such Class A Member’s Interest, involuntarily, by operation of law or voluntarily, without the consent required by this Section 12, the transferee or assignee shall: (i) be entitled only to receive that proportion of profit and loss, and any distribution of Fund assets, attributable to the Interest acquired by reason of such disposition from and after the effective date of such disposition, and only upon written notification of same to the Manager; and (ii) have no other rights as a Class A Member unless admitted as a Substitute Member in accordance with the terms of this Agreement.

# Representations, Warranties and Covenants

## **Class A Members’ Representations and Warranties**. Each Class A Member represents and warrants to the Fund, the Manager, every Class B Member, and to every other Class A Member as follows:

### There is no misrepresentation by the Class A Member contained in the Subscription Agreement and the forms attached thereto completed by such Class A Member.

### If such Class A Member is a corporation, partnership, limited liability company, trust or other entity, that the officer (or other signatory) signing on its behalf has been duly authorized to execute and deliver this Agreement and the Certificate.

### Its interest in the Fund is being acquired for investment, and not with a view to the sale or distribution of any part thereof, and that it has no present intention of selling, granting participation in or otherwise distributing the same;

### It understands that its interest in the Fund has not been registered under the Securities Act and that any transfer or other disposition of the interest may not be made without registration under the Securities Act or pursuant to an applicable exemption therefrom;

### It is (i) an Accredited Investor and a Qualified Purchaser or (ii) a Knowledgeable Employee or a company owned exclusively by Knowledgeable Employees or a person who acquires securities in accordance with Rule 3c-6 under the 1940 Act which were originally acquired by one or more Knowledgeable Employees; and

### It does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person, or to any third person, with respect to its interest in the Fund.

## **Class A Member’s Covenants**. Each Class A Member covenants to the Fund and the Manager that he or she will:

### At the time such Class A Member is admitted to the Fund by the Manager, promptly execute all relevant certificates and other documents, as the Manager shall request;

### Promptly, upon request by the Manager, provide to the Manager all financial data, documents, reports, certifications or other information necessary or appropriate to enable the Fund to apply for and obtain an exemption from the registration provisions of applicable law and any other information required by governmental agencies having jurisdiction over the Fund; and

### Comply with the requirements and provisions of the Delaware LLC Act, which he or she acknowledges shall govern the rights and liabilities of the Class A Members, except as otherwise provided in this Agreement.

# Special Power of Attorney

## **Execution and Consent**. Each Member hereby irrevocably constitutes and appoints the Special Attorney as the attorney in fact for such Member with power and authority to act in the Member’s name and on the Member’s behalf to execute, acknowledge, swear to and file documents and instruments necessary or appropriate to the conduct of the Fund’s business, which shall include, but not be limited to, the following:

### The Certificate and this Agreement, as well as amendments thereto as required by the laws of any state;

### Any other certificates, instruments and documents, including fictitious name certificates, as may be required by, or may be appropriate under, the laws of any state; and

### Any documents that may be required to effect the continuation of the Fund, the admission of an Substitute Member, the withdrawal of a Member, or the dissolution and termination of the Fund, provided that such continuation, admission, withdrawal or dissolution and termination are in accordance with the terms of the Certificate and this Agreement.

## Procedural Aspects. The power of attorney granted by each Member to the Special Attorney:

### Is a Special Power of Attorney, coupled with an interest, and is accordingly irrevocable;

### May be exercised by the Special Attorney for each Member by listing all of the Members executing any instrument with a single signature of such Special Attorney acting as attorney in fact for all of them; and

### Shall survive the assignment by a Member of the whole or any portion of such Member’s Interest; provided that where the assignee has been approved in accordance with the provisions of this Agreement for admission to the Fund as a Substitute Member, the Power of Attorney shall survive such assignment for the sole purpose of enabling the Special Attorney to execute, acknowledge and file any instrument necessary to effect such substitution.

# Dissolution and Liquidation of the Fund

## **Termination of the Fund or a Series**.

### Subject to the Delaware LLC Act, the Fund shall terminate, and the affairs of the Fund shall be wound up upon the earlier of:

#### The election of termination by the Manager in the event that substantially all Fund assets have been distributed to the Members in accordance with this Agreement;

#### 90 calendar days after no manager remains due to the withdrawal, bankruptcy or dissolution of the Manager, unless a Majority in Interest of the Class A Members voting collectively elects to continue the Fund within such 90-calendar day period;

#### At any time upon the election of a Majority in Interest of the Class A Members voting collectively with the consent of the Manager;

#### At any time there are no Class A Members, unless the Fund is continued in accordance with the Delaware LLC Act;

#### Upon the occurrence of any event that would cause the dissolution of the Fund prior to the expiration of the Fund’s term as specifically provided by the Delaware LLC Act.

### In the event that the Fund is terminated pursuant to Section 15.1(a)(ii), a Majority in Interest of the Class A Members voting collectively shall elect one or more persons to serve as liquidators to manage the liquidation of the Fund (which liquidation shall be conducted in the manner described in Sections 15.2, 15.3, 15.4, 15.5, and 15.6).

### The Manager, in its sole discretion, may terminate any series of the Fund at any time. Any series of the Fund so terminated shall not cause any other series to terminate. If the Manager terminates any series of the Fund, the Manager may deem any Member of that series whose Capital Account balance is zero or less than zero to have ceased to be a Member as of the date such Capital Account balance became zero or less than zero.

## **Winding Up Procedures**.

### Promptly upon the termination of the Fund or series, the affairs of the Fund or series, as the case may be, shall be wound up and the Fund or series liquidated. Net Profits or Net Losses attributable to the Fund or such series and any other items of income or loss realized during the winding up period shall be allocated to the Member’s Capital Accounts in accordance with the provisions of Section 9.

### Distributions during the winding up period may be made in cash or in kind or partly in cash and partly in kind. The Manager or the liquidator shall use its best judgment as to the most advantageous time for the Fund to sell Financial Instruments or to make distributions in kind. All cash and each Financial Instrument distributed in kind after the date of dissolution of the Fund or series shall be distributed in accordance with Section 15.5, unless such distribution would result in a violation of a law or regulation applicable to a Class A Member, in which event, upon receipt by the Manager of notice to such effect, such Class A Member may designate a different entity to receive the distribution, or designate, subject to the approval of the Manager, an alternative distribution procedure (provided such alternative distribution procedure does not prejudice any of the other Members). Each Financial Instrument so distributed shall be subject to reasonable conditions and restrictions necessary or advisable, as determined in the reasonable discretion of the Manager or the liquidator, in order to preserve the value of such Security or for legal reasons.

## **Order of Payments in Liquidation**. The assets of the Fund or series shall be distributed in final liquidation of the Fund or series in the following order:

### To the creditors of the Fund, or in the case of a liquidation of a series, to the creditors of the Fund with respect to such series, other than Members, in the order of priority established by law, either by payment or by establishment of reserves;

### To the Members, or in the case of a liquidation of a series, to the Members of such series, in repayment of any loans made to, or other debts owed by, the Fund to such Members; and

### The balance, if any, to the Members and the Manager in accordance with Section 11.1.

### Notwithstanding the foregoing, prior to final liquidation of the Fund, the Manager shall contribute to the capital of the Fund the amount, if any, described in Section 15.4, which amount, if any, shall be distributed to the Class A Members in accordance with Section 15.4.

## **Return of Excess Distributions.**

### In connection with the final liquidating distribution of the Fund, or at any earlier time determined by the Manager in its sole and absolute discretion, the Manager, in its capacity as the Class B Member, shall contribute to the Fund, in cash, an amount for each series equal to the lesser of (i) the Excess Performance Allocation Distributions for such series and (ii) the After-Tax Performance Allocation Amount for such series. Any amount contributed by the Manager under this Section 15.4(a) with respect to any series shall be promptly distributed by the Fund to the Class A Members of such series.

### “Excess Performance Allocation Distributions” for a series of the Fund means

#### the Performance Allocation Distribution Amount attributable to such series; minus

#### the amount that would otherwise have been distributable to the Manager as the Class B Member with respect to such series if the aggregate amount of all distributions made over the Fund’s term had instead been made as a single distribution upon the liquidation of the Fund under this Section 15.

### “After-Tax Performance Allocation Distribution Amount” for a series means the Performance Allocation Distribution Amount of such series, minus the greater of

#### taxes paid or payable by the partners of the Manager with respect thereto or

#### the aggregate amount distributed to the Manager as the Class B Member with respect to such series in the Fund pursuant to Section 11.2.

### “Performance Allocation Distribution Amount” associated with a series shall mean the aggregate amount of distributions received by the Manager in its capacity as the Class B Member pursuant to Section 11.1(a) attributable to such series.

## **Liquidating Trust**. If upon the termination and winding up of the Fund there are among the assets of the Fund Non-Marketable Securities, upon written notice to the Class A Members, the Manager may cause a liquidating trust (a “Liquidating Trust”) to be formed. Such a trust shall be under the sole management and control of the liquidating trustee (the “Liquidating Trustee”), who shall have full powers to carry out the purposes of the trust. The Liquidating Trustee shall be indemnified and exculpated on substantially the same terms as the Manager pursuant to Section 5.2 hereof. The Manager shall determine the identity of the Liquidating Trustee, who may be, but shall not be required to be, the Manager or a partner thereof or otherwise an Affiliate of the Manager. The Liquidating Trust will hold such Non-Marketable Securities owned by the Fund as the Manager shall determine, and the various Members shall be beneficiaries and shall participate in any distributions from the Liquidating Trust in the same proportions as such beneficiaries would have received from the Fund pursuant to Section 15.3(c) had such distributions instead been made by the Fund. The Liquidating Trustee shall hold such Financial Instruments solely for the purpose of sale or other disposition for the accounts of the several Members, and, upon such sale or other disposition, the net proceeds therefrom (after payment of expenses of the Liquidating Trust) shall be distributed among the beneficiaries in the proportions determined under the preceding sentence; provided, however, that such Financial Instruments may (in the Liquidating Trustee’s discretion), and if such Financial Instruments are not sold or otherwise disposed of within 5 years of transfer to the Liquidating Trust shall, be distributed to the beneficiaries in such proportions. If a Liquidating Trust is established, the Liquidating Trustee will be entitled to be reimbursed for all reasonable out-of-pocket expenses and reasonable expenses related to sales of assets and other expenses consistent with those borne by the Fund pursuant to Section 4.2 and will receive, at the beginning of each quarter, a quarterly fee of 0.25 percent of the net asset value of the Liquidating Trust as of such date.

## **Final Statement**. As soon as practicable after the dissolution of the Fund, a final statement of its assets and liabilities shall be prepared by the Manager and/or the service providers of the Fund and furnished to the Members.

# Tax Matters

## **Partnership Representative.**

### The Partnership Representative shall have all powers necessary to perform fully in its capacity as the partnership representative and, in such capacity, the Partnership Representative shall use its reasonable efforts to comply with the responsibilities outlined in Code sections 6221 through 6233 (including the Treasury Regulations) and any corresponding provision of state or local law and shall have any powers necessary to perform fully in such capacity.

### In furtherance of the foregoing, the Partnership Representative is authorized to represent the Fund before taxing authorities and courts in tax matters affecting the Fund and the Members in their capacity as such and shall keep the Members informed of any such administrative and judicial proceedings. The Partnership Representative shall be entitled to be reimbursed by the Fund for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Fund and the Members in their capacity as such.

## **Tax Elections**.

### The Partnership Representative, in its capacity as partnership representative, and the Fund shall, in the sole discretion of the Partnership Representative, make the election under Code section 6226(a).

### Other than as provided in Section 16.4, the Partnership Representative, in its capacity as partnership representative, in its sole discretion may apply similar provisions to those found in this Section 16 to any tax audit, examination, or review process not explicitly addressed herein, including in respect of any state, local or foreign tax regime.

### The Partnership Representative shall have the authority to cause the Fund to make or revoke any of the elections referred to in Code section 754, or any similar provision enacted in lieu thereof.

## **Requirement for Members to Provide Certain Information and Cooperation**.

### Each Member shall promptly provide the Fund with any information or documentation required by the Fund to enable the Fund to comply with Code sections 6221 through 6241, including (i) providing any information or taking such other actions as may be reasonably requested by the Partnership Representative in order to determine whether any Imputed Underpayment Amount may be modified pursuant to Code section 6225(c) and (ii) upon the request of the Partnership Representative, filing any amended U.S. federal, state or local income tax return and paying any tax due in connection with such tax return in accordance with Code section 6225(c)(2). A Member’s obligation to comply with this Section 16.3 shall survive the transfer, assignment or liquidation of such Member’s Interest in the Fund.

### Each Member shall take such actions as may be required to effect the Manager’s (or its designee’s) designation as the Partnership Representative and shall promptly provide to the Fund such information as may be necessary or desirable in order for the Partnership Representative to carry out its powers under Section 3.4(l) and this Section 16, including information to facilitate compliance with Code section 743 and elections permitted thereunder.

### Each Class A Member shall reasonably cooperate with the Partnership Representative in connection with any tax audit of the Fund or any existing or former investment.

## **Classification as a Fund**. The parties hereto intend that the Fund be classified as a “partnership” for U.S. federal income tax purposes. Except with the consent of all Members, (a) the Partnership Representative shall not elect to have the Fund classified as an association taxable as a corporation for U.S. federal income tax purposes pursuant to Treasury Regulation section 301.7701–3, and (b) neither the Partnership Representative nor any other Member shall make any other election or make any filing with any taxing or governmental authority that would cause the Fund to be classified as an association taxable as a corporation for U.S. federal income tax purposes.

## **Tax Audits**. Each Member shall reasonably cooperate with the Manager in connection with any tax audit of the Fund or any existing or former investment.

## **Survival**. The provisions of this Section 16 shall survive any termination of this Agreement.

# General Provisions

## **Address and Notices**. The address of each Class A Member for all purposes shall be the address set forth on the signature page to this Agreement or such Member’s subscription documents or such other address of which the Manager has received written notice in accordance with this Section 17.1. The address of the Manager for all purposes shall 125 Summer Street, Floor 22, Boston, Massachusetts 02110, or such other address of which the Manager has provided written notice to the Members in accordance with this Section 17.1. Any notice, demand or request required or permitted to be given or made hereunder shall be in writing and shall be deemed given or made when delivered in person or when sent to such Member at such address by registered or certified mail, return receipt requested, or by electronic mail.

## **Titles and Captions**. All section titles and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

## **Pronouns and Plurals**. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

## **Further Action**. The parties shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate to achieve the purposes set forth in this Agreement.

## **Governing Law, Personal Jurisdiction and Venue**. The parties acknowledge and agree that any claim, controversy, dispute or action relating in any way to this Agreement or the subject matter of this Agreement shall be governed solely by the laws of the State of Delaware, without regard to any conflict of laws doctrines. The parties irrevocably consent to being served with legal process issued from the state and federal courts located in the State of Delaware and irrevocably consent to the exclusive personal jurisdiction of the federal and state courts situated in the State of Delaware. The parties irrevocably waive any objections to the personal jurisdiction of these courts. Said courts shall have sole and exclusive jurisdiction over any and all claims, controversies, disputes and actions which in any way relate to this Agreement or the subject matter of this Agreement. The parties irrevocable waive the right to a jury trial if and to the extent that such a waiver is permissible under applicable law. The parties also irrevocably waive any objections that these courts constitute an oppressive, unfair, or inconvenient forum and agree not to seek to change venue on these grounds or any other grounds.

## **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

## **Entire Agreement**. This Agreement, together with the related Subscription Agreement and any other written agreement between the Manager, on behalf of the Fund, and any Member, shall constitute the entire agreement and understanding among all the parties hereto with respect to the subject matter hereof. No covenant, representation or condition not expressed in this Agreement or such Subscription Agreement (or, if applicable, any supplemental agreement to this Agreement) shall affect or be deemed to interpret, change or restrict the express provisions hereof.

## **Amendment**. This Agreement may be modified or amended only with the consent of the Manager and the affirmative vote of a Majority of Interests of the Class A Members voting collectively, except that (a) the Manager may amend this Agreement from time to time without the consent, approval or other authorization of, or notice to, any of the Class A Members if, in the opinion of the Manager, the amendment does not have a material adverse effect on any Class A Member; (b) no amendment may, without the consent of each affected Class A Member (i) convert a Class A Member’s interest to that of the Manager, or (ii) modify the limited liability of any Class A Member; and (c) no amendment may materially and adversely modify any provision of this Agreement specific to a specific series of Class A Interests or a specific class of a specific series of Class A Interests or the holders of a specific series or specific class of a specific series of Class A Interests without the consent of a Majority in Interests of the Class A Members of such series or class of such series of Class A Interests.

## **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Fund.

## **Waiver by Member**

### Any Member by notice to the Manager may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other Member to such first mentioned Member.

### No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other existing or subsequent breach.

## **Confidentiality**.

### Each Member will maintain the confidentiality of, and will not disclose any, information furnished by the Manager or its Affiliates, or agents of either, or by any person or entity associated with the development of the Property, regarding the Manager, the Fund, the Portfolio Entities, or the Interests received by such Member pursuant to this Agreement or otherwise, except (i) if such information is already in the possession of the Member (provided, that such information is not known by the Member to be subject to another confidentiality agreement with or other obligation (whether contractual, legal or fiduciary) to the Manager or another person), (ii) if such information becomes generally available to the public other than as a result of a disclosure not authorized herein by the Member or its directors, officers, employees, agents or advisors, (iii) if such information becomes available to the Member on a non-confidential basis from a source other than the Manager or its advisors (provided, that such source is not known by the Member to be bound by a confidentiality agreement with or other obligation (whether contractual, legal or fiduciary) to the Manager or another person), (iv) as otherwise required by governmental regulatory agencies, tax authorities, self-regulating bodies, law, legal process or litigation in which such Member is a defendant, plaintiff or other named party (provided, any disclosure that is either (x) not required by a governmental regulatory agency, tax authority, self-regulating body or (y) not on a confidential basis, shall require prior written notice thereof to the Manager) or (v) to directors, employees, representatives and advisors of such Member and its Affiliates who need to know the information, who are informed of the confidential nature of the information and who agree to keep it confidential. Without limitation of the foregoing, each Member acknowledges that notices and reports to Members hereunder may contain material non-public information concerning, among other things, the Portfolio Entities and agrees not to use such information other than in connection with monitoring its investment in the Fund and agrees in that regard not to trade in securities on the basis of any such information.

### To the extent that the Freedom of Information Act, 5 U.S.C. § 552, (“FOIA”), any state public records access law, any state or other jurisdiction’s laws similar in intent or effect to FOIA, or any other similar statutory or regulatory requirement would potentially cause a Member or any of its Affiliates to disclose information relating to the Fund, the Manager, and/or the Underlying Interests, such Member hereby agrees that, in addition to compliance with the notice requirements set forth in Section 17.11(a), such Member (x) shall take commercially reasonable steps to oppose and prevent the requested disclosure unless (i) such Member is advised in writing by counsel that there exists no reasonable basis on which to oppose such disclosure, (ii) the Manager does not object to such disclosure within ten (10) business days (or such lesser time period as stipulated by the applicable law) of such notice or (iii) such disclosure solely relates to fund-level, aggregate performance information (e.g., aggregate cash flows, overall internal rates of return, and such Member’s own Capital Commitment) and does not include (A) any information relating to Underlying Interests, (B) copies of this Agreement, the Memorandum, the Subscription Agreement and related documents or (C) any other information not referred to in clause (iii) above and (y) acknowledges and agrees that, notwithstanding any other provision of this Agreement, the Manager may, in order to prevent any such potential disclosure that the Manager determines in good faith is likely to occur, withhold all or any part of the information otherwise to be provided to such Member other than the fund-level, aggregate performance information specified in clause (iii) above and the IRS Forms 1065, Schedule K-1s.

## **Rights and Remedies**

### The rights and remedies of any of the Members hereunder shall not be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

### Each of the Members confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Member aggrieved as against the other Members for a breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

## **Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement binding on all parties, notwithstanding that all the parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing his, her or its signature hereto, independently of the signature of any other party.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the Manager below and by each Member on one or more separate signature pages.

|  |  |
| --- | --- |
|  | **SKK Ventures QP Manager, LLC**  Manager    By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [NAME]  Managing Member |
|  |  |

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**MEMBER SIGNATURE PAGE**

Your signature on this signature page evidences your agreement to be bound by the Agreement.

|  |  |
| --- | --- |
|  |  |
| **INDIVIDUALS:** | **ENTITIES** |
| Signature | Name of Entity *(Please type or print)* |
| Name *(Please type or print))* | By:  Signature |
| Name of Spouse if Co-Owner *(Please type or print)* | Name of Authorized Signatory *(Please type or print)* |
| Signature of Spouse if Co-Owner | Title of Authorized Signatory *(Please type or print)* |
|  |  |

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**Appendix I: Definitions**

“1940 Act” means the Investment Company Act of 1940, as amended.

“Accredited Investor” means a person who meets the requirements of an “accredited investor,” as defined in Section 501(a) of Regulation D under the Securities Act.

“Affiliate” means, when used with reference to a specified person, any person directly or indirectly controlling, controlled by or under common control with the specified person, any trust or foundation to which the specified person has made a majority of the grants, donations or contributions received by that trust or foundation, a person owning or controlling 10 percent or more of the outstanding voting securities of the specified person, a person 10 percent or more of whose outstanding voting securities are owned or controlled by the specified person, any officer, director, partner, manager, member, trustee, employee, agent, or portfolio manager of the specified person, and if the specified person is an officer, director, partner, manager, member, trustee, employee, agent, or portfolio manager, any corporation, partnership, limited liability company, or trust for which the specified person acts in any such capacity.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

“Capital Account” has the meaning set forth in Section 8.1(a).

"Capital Contribution" means a contribution of cash or Financial Instruments to the Fund by a person that is (or thereupon becomes) a Member, whether initially contributed or subsequently contributed as permitted hereby, but excluding loans designated as such.

“Certificate” means the Certificate of Limited Liability Company of the Fund, as filed with the Secretary of State of the State of Delaware.

“Code” means the Internal Revenue Code of 1986, as amended.

“Delaware LLC Act” means the Delaware Revised Uniform Limited Liability Company Act, as amended.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Financial Instruments” means all types of financial assets, U.S. or non-U.S., whether publicly or non-publicly traded, and all dividends, distributions, return of capital, interest, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such financial assets, as well as any and all securities entitlements related thereto. Without limiting the foregoing, “Financial Instruments” includes: (a) stocks, notes, bills, bonds, debentures, subscriptions, preferred stocks, convertible securities, options (including, without limitation, covered and uncovered puts and calls and over-the-counter options); (b) rights, warrants, swaps, currencies, futures, single stock futures, other commodity interests, commodity options, options on futures, certificates of deposit; (c) trust receipts, American Depositary Receipts (ADRs), International Depositary Receipts, equipment trust certificates; (d) real estate, precious metals, and commodities; (e) interests in investment companies, interests in exchange-traded funds (ETFs), interests in real estate investment trusts (REITs), interests in Funds, certificates of interest or participation in any profit-sharing agreement, collateral trust certificates; (f) bankruptcy claims, investment contracts, loan agreements, evidences of indebtedness, mortgages, mortgage-backed securities, and asset backed securities; and (g) derivative and similar transactions, including: (i) basis, buy/sell-back, interest rate, currency, cross currency, foreign exchange, commodity, credit, emissions, equity, equity index, weather, bond, option, bullion, repurchase, reverse-repurchase, securities lending and borrowing, and total return transactions, (ii) any transaction included in the definition of "Specified Transaction" in the ISDA 2002 Master Agreement (or any successor thereto), (iii) transactions ancillary to transactions described within this definition, (iv) any other similar transaction existing now or developed in the future in the financial markets, or (v) transactions to secure, collateralize or provide credit support for any of the foregoing transactions. Such Financial Instrument may, but is not required to be, structured as a swap, collar, forward, forward rate agreement, cap, floor, future, option, option on a transaction or any other type of structure, or any combinations of structures.

“Fiscal Year” means the period from the date that the Fund commences or commencing on any subsequent January 1, and ending on the succeeding December 31, or, if earlier, ending on the date of dissolution and termination of the Fund.

“Fund” means SKK Ventures QP, LLC, a limited liability company organized under the laws of the Delaware LLC Act.

“GAAP” means the generally accepted accounting principles used in the U.S. to prepare, present and report financial statements of limited liability companies such as the Fund.

“Interests” mean the Fund interests of the Fund. Each Member’s Interest shall be equal to the quotient resulting from dividing (a) the amount in the Member’s Capital Account, including the fair value of such Member’s interests in any New Issues Accounts and other memorandum accounts in which the Member has an interest, by (b) the aggregate amount in the Capital Accounts of all Members, including the fair value of all New Issues Accounts and other memorandum accounts. Classes of Interests are not “series” within the meaning of Section 17-218 of the Delaware LLC Act.

“Involuntary Withdrawal” means any of the dissolution of the Manager, a voluntary or involuntary petition for bankruptcy being filed by or against the Manager, or the making by the Manager of any assignment for the benefit of its creditors.

“IRS” means the Internal Revenue Service.

“Knowledgeable Employee” has the meaning ascribed to that term in Rule 3c-5(a)(4) under the 1940 Act.

“Liquidating Trust” has the meaning set forth in Section 15.5.

“Liquidating Trustee” has the meaning set forth in Section 15.5.

“Majority in Interest” of (a) the Class A Members voting collectively shall mean the Class A Members of all series and classes whose aggregate Percentage Interests exceeds 50 percent of the Percentage Interests of all Class A Members, and (b) the Class A Members holding a Majority in Interests of a series or class of a series shall mean the Class A Members whose aggregate Percentage Interests relating to such series or class exceeds 50 percent of the Percentage Interests of all Class A Members of such series or class, provided, that for purposes of either of the foregoing, any Class A Member Interest owned or controlled by the Manager or any Affiliate of the Manager shall be deemed not to be outstanding for purposes of any determination under this Agreement of a particular percentage in interest of the Class A Members and shall therefore not be considered in either the numerator or denominator of such percentage calculation.

“Management Fee” has the meaning set forth in Section 4.1.

“Manager” means SKK Ventures QP Manager, LLC, a Delaware limited liability company, and any other person appointed as a manager in accordance with the Agreement.

“Marketable Securities” means Financial Instruments that are (a) traded on a securities exchange (or similar market) or over the counter, and (i) freely transferable pursuant to either Rule 144 of the Securities Act (without being subject to any volume restrictions set forth in Rule 144(e)) or Rule 145 of the Securities Act it being agreed that the Manager may assume that none of the Members is an “affiliate” of the issuer thereof as defined under Rule 144 of the Securities Act and (ii) not subject to any underwriter “lock-up” or other contractual restrictions on transferability, or (b) currently the subject of an effective Securities Act registration statement.

“Members” has the meaning set forth in the introductory paragraph of this Agreement.

“Net Profits” or “Net Losses” means for each Fiscal Year or other period, the taxable income or taxable loss of the Fund for such period determined in accordance with Code section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code section 703(a)(1) shall be included in taxable income or taxable loss), with the following adjustments:

1. Any income of the Fund that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses shall be added to such taxable income or taxable loss;
2. Any expenditures of the Fund described in Code section 705(a)(2)(B) or treated as Code section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses, shall be subtracted from such taxable income or taxable loss;
3. In lieu of any depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or taxable loss, the Fund shall compute such deductions based on the book value of the Fund property, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3);
4. Gain or loss resulting from a taxable disposition of Fund property shall be computed by reference to the book value of such item of Fund property disposed of, notwithstanding that the adjusted tax basis of such item of Fund property differs from its book value;
5. In the event that the book value of any Fund property is adjusted to equal the fair market value of such Fund property, pursuant to Section 8.4, the amount of any increase or decrease in such book value attributable to such adjustment will be taken into account as gain or loss from the disposition of such item of Fund property for purposes of computing Net Profits and Net Losses;
6. In the event that any item of Fund property is distributed in-kind to a Member, the difference between the fair market value of such item of Fund property and the adjusted tax basis of the Fund in such item of Fund property will be taken into account as gain or loss from the disposition of such item of Fund property for purposes of computing Net Profits and Net Losses; and
7. Any income, gain, loss, or deduction specially allocated to the Members under Section 9.2 or Section 9.3 shall not be taken into account in computing Net Profits or Net Losses.

“Non-Marketable Securities” means Financial Instruments that are not Marketable Securities.

“Partnership Representative” means the person designated in accordance with Section 3.4(l) as the “partnership representative” of the Fund, within the meaning of Code section 6223(a) and any corresponding provision of state or local law.

“Percentage Interest” with respect to any Class A Member of any series or any class of any series on a particular date, the fraction, expressed as a percentage, the numerator of which is the Capital Account balance of such Class A Member relating to such series or class and the denominator of which is the aggregate Capital Account balance of all Class A Interests of such series or class on such date.

“Portfolio Entity” means any corporation or other issuer (including a Portfolio Fund) in which the Fund holds a direct interest, other than money market funds or similar issuers of cash equivalent interests.

“Portfolio Fund” means a pooled investment vehicle in which the Fund holds a direct interest.

“Portfolio Interest” means any direct interest held by the Fund in a Portfolio Entity; provided, that the Manager shall have the discretion to elect, at the time of acquisition, to treat multiple direct interests acquired by the Fund in a single transaction or series of related transactions either (a) as a single Portfolio Interest or (b) as two Portfolio Interests, with one such Portfolio Interest allocated to one series of Interests and the other Portfolio Interests allocated to another series of Interests.

“Qualified Purchaser” has the meaning ascribed to that term in Section 2(a)(15) of the 1940 Act.

“Securities Act” means the Securities Act of 1933, as amended.

“Series Allocated Net Profits” or “Series Allocated Net Losses” relating to a specific series for a Fiscal Year or other period means the portion of the Net Profits or Net Losses for such period specifically allocated to such series, which shall be determined as follows:

1. all amounts of income and sale proceeds received by the Fund during such period that the Manager determines are directly attributable to the Portfolio Interest assigned to such series; plus
2. an amount equal to the series’ Series Percentage of the aggregate amount of income and sale proceeds received by the Fund during such period less the amounts of income and sale proceeds described in (a) above for all series; minus
3. the portion of the Management Fee paid by the Fund attributable to Capital Contributions to such series; minus
4. all amounts of Fund expenses as provided in Section 4.2(a) incurred by the Fund during such period that the Manager determines are directly attributable to the Portfolio Interests assigned to such series, which Fund expenses shall not be deemed to include any amounts paid on behalf of the Fund by any other person and not reimbursed or reimbursable by the Fund; and minus
5. an amount equal to the series’ Series Percentage of the aggregate amount of Fund expenses less the amount of expenses described in (c) above for all series, which Fund expenses shall not be deemed to include any amounts paid on behalf of the Fund by any other person and not reimbursed or reimbursable by the Fund.

For any period, the sum of the amounts of Series Allocated Net Profits for all series then outstanding shall equal the amount of Net Profits, and the sum of the amounts of Series Allocated Net Losses for all series then outstanding shall equal the amount of Net Losses.

“Series Percentage” of a specific series for a Fiscal Year or other period means (x) the aggregate amount of all Capital Contributions as of the last day of such period with respect to the Class A Members of such series divided by (y) the aggregate amount of all Capital Accounts in the Fund as of the last day of such period. The Series Percentage of a series that has been terminated in accordance with this Agreement will be deemed to be zero for any period after such termination.

“Special Attorney” means, with respect to Section 14, the Manager and its respective successors.

“Subscription Agreement” means the Subscription Agreement in the form required by the Manager in connection with the subscription of Class A Interests, and any other document requirement by the Manager in connection with the subscription of Class A Interests.

“Substitute Member” means any purchaser, transferee, donee or other recipient of any disposition of a Interest) after being admitted to the Fund as a Member in accordance with the terms of the Agreement.

“Transfer” means offer, sell, transfer, assign, exchange, hypothecate or pledge, or otherwise dispose of or encumber.

“Treasury Regulations” means the regulations promulgated by the U.S. Treasury under the Code.