# OPERATING AGREEMENT

# OF

# ARCTIC EQUITY II LLC

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT ("**Agreement**") of ARCTIC EQUITY II LLC (the “**Fund**”), a Delaware limited liability company, effective as of January 27th, 2022, is entered into by and among ARCTIC CAPITAL LLC, represented by ALVI FINANCIAL GROUP LLC, by Dmitry Vorontsov as its manager (the “**Manager**”) and the persons listed on the signature pages hereto (individually a "**Member**" and collectively, the "**Members**").

# RECITALS

**WHEREAS**, the Certificate of Formation for the Fund was filed with the Secretary of State of Delaware on January 27th, 2022;

**WHEREAS**, the Fund has been formed primarily to raise funds in one or more private offerings (each, an “**Offering**”), and subsequently to use such funds to invest in, acquire, hold and/or sell Portfolio Securities (as defined herein);

**WHEREAS**, the Manager, the Members and the Fund desire to set forth herein their respective agreements and rights regarding, among other relevant factors, the business of the Fund, the management and operation of the Fund and the Interests acquired by Members.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Members hereby agree as follows:

# ARTICLE I

## DEFINED TERMS

The defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article I.

“**1933 Act**” shall mean the Securities Act of 1933, as amended.

“**Accredited Investor**” has the meaning set forth in Rule 501 of Regulation D promulgated under the 1933 Act.

“**Accounting Period**” means the period beginning on the day immediately succeeding the last day of the immediately preceding Accounting Period (or, in the case of the first Accounting Period, the date of this Agreement) and ending on the earliest occurring of the following: (i) the last day of the Fiscal Year; (ii) the day immediately preceding the day on which a Member makes an additional contribution to, or a full or partial withdrawal from its Capital Account; (iii) the day immediately preceding the day on which a new Member is admitted to the Fund; or (iv) the date of termination of the Fund in accordance with Article VIII of this Agreement.

“**Act**” means the Delaware Limited Liability Company Act, Section 18-101, *et seq.*, as it may be amended from time to time and any successor to said law.

**“Additional Capital Contribution”** has the meaning set forth in paragraph 3.2(d).

**“Additional Contribution Amount”** has the meaning set forth in paragraph 3.2(d).

**“Additional Contribution Notice”** has the meaning set forth in paragraph 3.2(d).

“**Affiliate**” means any Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. The term “control” “controlled”, or “controlling” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, no Member shall be deemed to be an Affiliate of the Fund.

“**Agreement**” means this Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

**“Attorney”** has the meaning set forth in paragraph 11.1 of this Agreement.

**“Available Cash”** means, at a particular time, the cash and cash equivalents held by the Fund less such cash reserves as the Manager reasonably determines are necessary to pay on a timely basis costs and expenses of any Proceeding or indemnification obligation, taking into account the anticipated revenues of the Fund.

**“Capital Account”** has the meaning set forth in paragraph 4.1(b).

“**Capital Contribution**” of a Member means a contribution such Member has made to the Fund pursuant to paragraph 3.2.

**“Close of Business”** means 5:00 p.m., local time, in Delaware, USA.

**“Code”** means the Internal Revenue Code of 1986, as amended, or any successor federal income tax code.

“**Consent**” means the prior written consent of a Person, given as provided in this Agreement, to do the act or thing for which the approval is solicited, or the act of granting such approval, as the context may require.

“**Disposition**” means the sale, exchange, redemption, assignment, transfer, repayment, repurchase or other disposition by the Fund of all or any portion of an Investment for cash or for Marketable Securities that can be distributed to the Members pursuant to paragraph 4.8, including the receipt by the Fund of a liquidating dividend, distribution upon a sale of all or substantially all of the assets of a Portfolio Company or other like distribution for cash or for Marketable Securities.

**“Dispute”** has the meaning specified in paragraph 13.19(b).

**“Drag-Along Notice”** has the meaning specified in paragraph 7.4.

**“Drag-Along Rights”** has the meaning specified in paragraph 7.4.

**“Dragged Member”** has the meaning specified in paragraph 7.4.

“**Entity**” means a corporation, partnership, limited partnership, limited liability company, limited liability partnership, business trust or other association.

**“Event of Bankruptcy”** means any of the following:

* + 1. any assignment by a Person for the benefit of creditors;
    2. the filing by a Person of a voluntary petition in bankruptcy;
    3. the subjection of a Person to the entry of an order for relief or, following a hearing and judicial or other authoritative determination thereof, to a declaration of insolvency in any federal or state bankruptcy or insolvency proceeding;
    4. the filing of a voluntary petition or answer by a Person seeking for such party, a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law;
    5. the filing of an answer or other pleading by a Person admitting all of or failing to contest at least one of the material allegations of an involuntary petition filed against such party in a proceeding of the type described in (b) – (d) above;
    6. a Person’s pursuit of, consent to, or acquiescence in the appointment of a trustee, receiver, or liquidator of such Person of all or any substantial part of such Person’s properties if such pursuit, consent or acquiescence is demonstrably evidenced by the actions or omissions of such party; or
    7. the expiration of 120 days after the date of the commencement of a proceeding against such party seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law if the proceeding has not been previously dismissed, or the expiration of 90 days after the date of the appointment, without such Person’s consent or acquiescence, of a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person’s properties if the appointment has not previously been vacated or stayed, or the expiration of 90 days after the date of expiration of a stay, if the appointment has not previously been vacated.

“**Fair Market Value**” means the value of Fund assets and, when the reference so requires, of Investments, determined as provided in paragraph 12.3.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**FINRA Event**” means the determination by the Corporate Finance Department of the FINRA that the Fund is deemed to be a “related person” of any FINRA member firm as such term is defined in FINRA Rule 5110(a)(6) or any successor rule.

“**Fiscal Year**” means the taxable year utilized by the Fund for federal income tax reporting purposes, which shall be the calendar year (or a period of less than the full calendar year in the case of the Fund’s formation or termination), unless a different period is required by law.

**“Follow-On Investments”** has the meaning set forth in paragraph 3.2(e).

**“Follow-On Investments Contribution Amount”** in paragraph 3.2(e).

**“Follow-On-Investments Contribution Notice”** in paragraph 3.2(e).

“**Fund**” has the meaning set forth in the recitals.

**“Fund Budget”** means a budget plan in the form of profit and loss statement and cash flow statement for Fiscal Quarter and Fiscal Year prepared by the Manager.

**“Fund Expenses**” has the meaning specified in paragraph 5.6(a).

“**Incapacity**” means, as to any Person, (i) the adjudication of incompetence or insanity, the filing of a voluntary petition in bankruptcy, the entry of an order of relief in any bankruptcy or insolvency proceeding or the entry of an order that such Person is bankrupt or insolvent, or (ii) the death, dissolution or termination (other than by merger or consolidation), as the case may be, of such Person.

**“Independent Appraiser”** means an investment banking firm, appraisal firm or any other financial expert of recognized national standing in the United States that (a) is qualified in the valuation of businesses, transactions and securities being analyzed; and (b) does not (or whose directors, officers, employees, Affiliates or stockholders do not) have a direct or indirect material financial interest in the Fund or a Member, who has not been, and, at the time called upon to give independent financial advice is not (and none of its directors, officers, affiliates or stockholders are) a director, officer, or the Manager of the Fund.

“**Indemnified Party**” means each of the following: (i) the present and former Manager and the Liquidating Trustee, (ii) each manager or managing member of any of the foregoing, (iii) each director, officer, stockholder, partner, member, employee, agent, legal counsel, representative and incorporator of any of the foregoing; (iv) trustees of any of the foregoing; (v) controlling persons or Affiliates of any of the foregoing; and (vi) successor, assigns and personal representatives of any of the foregoing.

“**Interest**” means the entire interest of a Member in the Fund at any particular time, including a Member’s share of the profits and losses of the Fund and a Member’s right to receive distributions of the Fund’s assets, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement.

“**Investment**” means any investment made by the Fund in the Portfolio Company.

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

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

**“Investment Management Agreement”** means the agreement entered into between the Manager and the Fund.

“**Issuer**” means the various issuers of securities acquired by the Fund deemed to be suitable by the Manager to purchase securities in its sole discretion.

**“Insured Party”** has the meaning specified in paragraph 5.7(d).

“**Issuer Securities**” means the securities issued by the Issuer.

“**Liquidating Trustee**” means the Manager or, if there is none, a Person selected by the consent of the Majority-In-Interest to act as a liquidating trustee.

“**Management Fee**” means the management fee payable pursuant to paragraph 5.6(c).

“**Manager**” means ARCTIC CAPITAL LLC, a Delaware Limited Liability Company.

**“Manager’s Percentage”** has the meaning specified in Section 5 of the Subscription Agreement.

**“Major Investor”** means any Member that, individually or together with such Member's Affiliates, holds at least 7.5% of the Percentage Interest.

“**Majority-in-Interest**” shall mean 51% or more of the Interests in the Fund.

“**Marketable Securities**” has the meaning specified in paragraph 4.8(c).

“**Member**” or “**Members**” means those Persons owning an Interest in the Fund.

**“Membership Interest”** means the Interest of a Member in the Fund.

**“Member’s Percentage”** has the meaning specified in Section 5 of the Subscription Agreement.

**“Misconduct”** shall have occurred if the Manager is found by a court of competent jurisdiction in a final, non-appealable judgment to have (a) intentionally committed (or enters a plea of nolo contendere to having committed) embezzlement, fraud or any other act involving material improper personal benefit against the Fund or its assets, (b) willfully and materially breached this Agreement, which breach remains uncured as of the date of such finding, in a manner which had a material adverse effect on the Fund, as found by a court of competent jurisdiction, or (c) knowingly violated any law in a manner which had a material adverse effect on the Fund, each time as found by a court of competent jurisdiction in a final, non-appealable judgment.

**“Net Investment”** means,with respect to each Tranche and each Participating Member in such Tranche, as of any date the total Capital Contributions made by the Participating Member attributed to such Tranche reduced by the total amount previously distributed to that Participating Member with respect to such Tranche pursuant to paragraph 4.8 and paragraph 8.3(g).

“**Net Profits**” means with respect to any Fiscal Quarter or other period, the excess, if any, of the items of income or gain over the Fund’s items of loss or deduction, and “**Net Losses**” shall mean, with respect to any Fiscal Quarter or other period, the excess, if any, of the Fund’s items of loss or deduction over its items of income or gain, in each case computed under the method of accounting for maintaining Capital Accounts, and, as applicable, Tranche Accounts of Members, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv), provided that if, in keeping with the provisions of Treasury Regulation 1.704-1(b) and Temporary Regulation l.704-1T(b)(4)(iv), any asset of the Fund is accounted for on the Fund books and in the Capital Accounts of the Members and, as applicable, Tranche Accounts of Members, at an amount other than its adjusted basis for tax purposes, then, for purposes of accounting for such items on the Fund’s books and in the Capital Accounts of the Members, and, as applicable, Tranche Accounts of Members, items of income, gain, loss, deduction or credit shall be calculated based upon the carrying value of the asset on the Fund’s books.

“**Offering**” means the offer and sale of Membership Interests by the Fund.

**“Operating Account”** shall have the meaning specified in paragraph 4.1(b).

**“Purchase Price”** shall have the meaning specified in Section 1 of the Subscription Agreement.

**“Participating Member”** means, with respect to a particular Tranche, a Member who makes a Capital Contribution that the Fund uses in funding such Tranche.

“**Percentage Interest**” means, with respect to a Member, means a percentage established for each Member on the Fund’s books and records of the Fund. The Percentage Interest of a Member for an Accounting Period will be determined by dividing the balance of the Member’s Capital Account as of the commencement of the Accounting Period by the sum of the Capital Accounts of all of the Members as of the commencement of such Accounting Period. The sum of the Percentage Interests of all Members for each Accounting Period will equal 100 percent.

“**Person**” means any natural person, corporation (stock or non-stock), limited liability company, limited liability partnership, limited partnership, partnership, joint stock company, joint venture, association (profit or non-profit), company, estate, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any government agency or political subdivision thereof.

“**Portfolio Company**” means **Relativity Space.**

“**Portfolio Securities**” means securities of a Portfolio Company, in which the Fund invests, and through Investments in various funds, primary and/or secondary sources.

**“Profit or Loss”** means the income or loss of the Fund as determined under the capital accounting rules of Treasury Regulation § 1.704 1(b)(2)(iv) for purposes of adjusting the Capital Accounts of Members and, as applicable, Tranche Accounts of Members, including, without limitation, the provisions of paragraphs 1.704 1(b)(2)(iv)(g) and 1.704 1(b)(4) of those regulations relating to the computation of items of income, gain, deduction and loss.

**“Proceeding”** means any action, claim, suit, investigation or arbitration or proceeding involving the Fund’s activities, whether at law or in equity, and whether by or before any court, arbitrator, governmental body or other administrative, regulatory or other agency or commission.

“**Qualified Client**” has the meaning as defined in Rule 205-3 of the Investment Advisers Act of 1940, as amended.

“**Realized Investment**” means any Investment (or any portion thereof) that has been the subject of a Disposition, in any such case to the extent so subject.

**“Record Date”** has the meaning specified in paragraph 10.6.

“**Related Person**” shall have the meaning specified in paragraph 5.10.

**“Rules”** shall have the meaning specified in paragraph 13.20(b).

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

**“Set Up Fee”** means the fixed one-time fee paid by Members to the Fund upon their admittance as a Member in such amount as set forth in the Subscription Agreement.

“**Side Letters**” means any written agreements or side letters entered into by the Fund with one or more Members on or after the date hereof.

**“Side Letter Member”** has the meaning specified in paragraph 13.3

“**Subscription Agreement**” means the subscription agreement each Member signs in connection with its Capital Contribution to the Fund, and any amendments or supplements thereto.

“**Target Capital Account**” means with respect to any Member, the balance in such Member’s Capital Account as of the end of the relevant Fiscal Quarter or other period, increased by (x) any amount which such Member is obligated to restore under this Agreement, (y) the amount such Member is treated as obligated to restore under Treasury Regulations Section 1.704-1(b)(2)(ii)(c) and (z) the amount which such Member is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) and the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5).

**“Target Investment Return”** means 30% gross annual investment return on the Capital Contributions.

**“Tranche”** means each separate investment by the Fund in the Portfolio Company.

**“Tranche Account”** is defined in paragraph 4.1(b).

**“Tranche Participation Percentage”** is defined in paragraph 4.1(b).

“**Transfer**” has the meaning specified in paragraph 7.1.

“**Treasury Regulations**” means the regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

# ARTICLE II

## ORGANIZATION

* 1. Formation. The Manager has formed a limited liability company pursuant to the provisions of the Act. The Members hereby ratify the execution and filing of the Certificate of Formation, as a result of which the Fund was formed as a limited liability company pursuant to the provisions of the Act. The Fund commenced upon the filing of the Certificate of Formation with the Secretary of State of Delaware. The Manager shall also execute and file for record any other document(s), as well as take such other action(s), as may be required in connection with the formation, operation, or dissolution of the Fund.
  2. Name. The name of the Fund is ARCTIC EQUITY II LLC. The business of the Fund, however, may be conducted, upon compliance with all applicable laws, under any other name designated in writing by the Manager, provided such name contains the words “limited liability company” or the abbreviation “LLC” or “L.L.C.”.
  3. Place of Business and Office; Registered Agent. The principal place of business will be located at the principal place of business from time to time of the Manager. The office of the Fund is 555 Madison Avenue, 5th Floor, NY 10022. The name of the registered agent in the State of Delaware is Corporation Service Company located at 251 Little Falls Drive, Wilmington, DE 19808, or such other agent as the Manager may from time to time designate
  4. Purpose.
     1. The Fund has been established primarily for the purposes of (i) conducting Offerings to raise capital; (ii) investing in, acquiring, holding and/or selling Portfolio Securities (either through direct purchase or through purchase of interests in entities the sole holdings of which are Issuer Securities) with the net proceeds received from the Offerings; and (iii) engaging in any and all other lawful activities and transactions as may be necessary, advisable, or desirable, as determined by the Manager, in its sole discretion, to carry out the foregoing or any reasonably related activities including, but not limited to, and subject to the applicable provisions of the Act and the rules and regulations promulgated thereunder, and the carrying on of any other activity that, in the opinion of the Manager, may be necessary, advisable and/or appropriate in connection therewith or incidental thereto.
     2. Notwithstanding the foregoing, no business or activities authorized by paragraph 2.4(a) shall be conducted that are forbidden by or contrary to any applicable law or to the rules or regulations lawfully promulgated thereunder, or to the constitution or rules of any association or governmental body with jurisdiction over the Fund (or any Affiliate of the Fund). If any of the terms, conditions or other provisions of this Agreement shall be in conflict with any of the foregoing, such terms, conditions or other provisions shall be deemed modified so as to conform therewith.
  5. Taxation. The Members intend that the Fund shall be taxed as a “partnership” for federal, state, local and foreign income tax purposes. The Members agree to take all reasonable actions, including but not limited to, the amendment of this Agreement and the execution of other documents, as may reasonably be required in order for the Fund to qualify for and receive “partnership” tax treatment for income tax purposes and agree not to take any actions inconsistent therewith.
  6. Qualification in Other Jurisdictions. The Manager shall cause the Fund to be qualified or registered under assumed or fictitious names or foreign limited liability company statutes or similar laws in any jurisdiction in which the Fund transacts business and to the extent, in the judgment of the Manager, such qualification or registration is necessary or advisable in order to protect the limited liability of the Members or to permit the Fund lawfully to own property or transact business. The Manager shall have the power and authority to execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Fund to conduct business as a limited liability company in all jurisdictions where the Fund elects to do business.
  7. No State-Law Partnership. The Members intend that the Fund not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venture of any other Member by virtue of this Agreement, and neither this Agreement nor any other document entered into by the Fund or any Member relating to the subject matter hereof shall be construed to suggest otherwise.
  8. Limitations on Interests. In no event shall the total number of beneficial owners of Interests exceed one hundred (100), as determined in accordance with Section 3(c)(1) of the Investment Company Act, and Section 1.77041(h)(3) of the Treasury Regulations, which regulation provides, in general, that under certain circumstances a Person indirectly owning an Interests through a partnership, a grantor trust or an S corporation shall be treated as a single Member.

# ARTICLE III

**MEMBERS AND MEMBERSHIP CAPITAL**

* 1. Members.

1. The names, addresses and Percentage Interests of the Members are set forth on Schedule A attached hereto and incorporated herein. The Manager is hereby authorized to complete or amend Schedule A from time to time to reflect the admission of additional Members, the withdrawal of a Member, the change of address of any Member, the change in the Percentage Interests of a Member, and other information called for by Schedule A, and to correct or amend Schedule A. Such completion, correction or amendment may be made from time to time as and when the Manager considers it appropriate. The Manager may, in its discretion, in lieu of providing each Member with a complete version of Schedule A, elect to provide any Member with a redacted or partial version of Schedule A containing only such information as the Manager determines appropriate under the circumstances; provided, that any such redacted or partial version of Schedule A shall contain at least such Member’s Percentage Interests.
2. Each Member shall promptly provide the Fund with the information required to be set forth for such Member on the Schedule A and shall thereafter promptly notify the Fund of any change to such information.
3. Each Member shall be an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act and a “qualified client” (as that term is defined in Rule 205-3 of the Investment Advisers Act of 1940, as amended, provided however that the Manager, may, in its sole and absolute discretion, accept subscriptions from only “accredited investors”.
4. No Member shall be required to lend any funds to the Fund.
5. Except as expressly authorized by this Agreement or the Act, the Members who are not the Manager shall have no right or authority to act for or bind the Fund. No Member, acting solely in the capacity as a Member, is an agent of the Fund and unless expressly authorized to do so by the provisions hereof or by action of the Manager, no Member may claim or exercise any authority to act, or to enter into any contract or agreement, or undertake or assume any obligation, debt or duty, on behalf of the Fund, and each Member shall indemnify the Fund for any costs or damages incurred by the Fund as the result of any unauthorized action of such Member.
6. The Manager shall have the right to admit Members, and to receive additional Capital Contributions from existing and new Members without the approval or Consent of any other Members. Unless admitted to the Fund as a Member, as provided in this Agreement, no Person shall be considered a Member. The Fund and the Manager need deal only with Persons so admitted as Members. They shall not be required to deal with any other Person (other than with respect to distributions to assignees pursuant to assignments in compliance with Article VII) merely because of an assignment or transfer of Fund’s Interest to such Person whether by reason of the Incapacity of a Member or otherwise; provided, however, that any distribution by the Fund to the Person shown on the Fund’s records as a Member or to its legal representatives, or to the assignee of the right to receive Fund’s distributions as provided herein, shall relieve the Fund and the Manager of all liability to any other Person who may be interested in such distribution by reason of any other assignment by the Member or by reason of his Incapacity, or for any other reason.
   1. Capital Contributions.
      1. Each Member’s Capital Contribution to the Fund shall be set forth on the Schedule A to this Agreement.
      2. No Member shall be paid interest on any Capital Contribution to the Fund or on such Member’s Capital Account. Any Interest issued to the Manager hereby shall constitute “profits interests” as that term is defined in Internal Revenue Service Procedure 93-27, 1993-2 CB 343, and the distribution provisions of this Agreement shall be interpreted in a manner consistent with such definition.
      3. No Member shall have any right to demand the return of its Capital Contributions, except as provided in this Agreement, including upon dissolution of the Fund pursuant to Article VIII.
      4. Additional Capital Contributions. The Manager shall have the right, subject to provisions of this paragraph, to require Members to make additional Capital Contributions in such amounts as the Manager reasonably determines is required from time to time to pay costs and expenses related to Proceedings of the Fund to the extent Available Cash is insufficient to cover such expenses (“**Additional Capital Contributions**”). The Manager shall deliver to the Members a written notice for the required additional Capital Contributions (an **“Additional Contribution Notice”**), setting forth a reasonably detailed description of the related expenses (the **“Additional Contribution Amount”**) and the Members’ pro rata shares of the Additional Contribution Amount which shall be based upon their then respective Percentage Interest. The rights and preferences proposed by the Manager for the Additional Contribution Amount shall be pari passu with the rights and preferences of the Interests then outstanding. Each Member shall, within 10 days from receipt of the Additional Contribution Notice, fund its proportionate share of the Additional Contribution Amount. Despite the foregoing, the Additional Contribution Amount required to be paid by each Member shall not exceed 3% of the Member’s total Capital Contribution without the prior written approval of the Majority-In-Interest of the Members.
      5. Follow-On Investments; Admission of New Members. Members shall have the right, but not the obligation, to make additional Capital Contributions to enable the Fund to exercise its pre-emptive rights with respect to any new issuances of Portfolio Securities, acquire Portfolio Securities of new investment rounds or acquire Issuer Securities or Portfolio Securities on the secondary market (**“Follow-On Investments”**), as follows: (a) The Manager shall deliver to the Members a written notice (a **“Follow-On Investment Contribution Notice”**) setting forth a reasonably detailed description of the terms and conditions of the Follow-On Investment, including the amount thereof (the **“Follow-On Investment Contribution Amount”**) and the Members’ pro rata shares of the Follow-On Investment Contribution Amount which shall be based upon their then respective Percentage Interests. If within five (5) business days after delivery of a Follow-On Investment Contribution Notice, a Member does not subscribe for all of its pro rata share of the Follow-On Investment Contribution Amount, the Manager may elect to take any of the following actions (or any combination thereof): (i) solicit, obtain and accept subscriptions from and issue Interests to third parties, for the unsubscribed portion of the Follow-On Investment Contribution Amount on the terms set forth in the Follow-On Investment Contribution Notice; and (ii) if the third parties solicited by the Manager collectively do not subscribe for all of the remaining portion of the Follow-On Investment Contribution Amount, solicit, obtain and accept subscriptions from the subscribing Members regarding the remaining portion of the Follow-On Investment Contribution Amount. The Persons to whom such additional Interests have been issued who previously were not Members shall automatically be admitted to the Fund as Members with respect to such additional Interests upon acceptance by the Manager, payment of the Follow-On Investment Contribution Amount and execution of this Agreement as a Member as set forth in paragraph 7.3. The Manager shall modify the Fund’s books and records (without Members approval) to reflect any additional Tranche required in accordance with this paragraph and associated changes to the Percentage Interests and Tranche Participation Percentages, and if the Manager accepts subscriptions from any non-Member, the Manager shall modify the Fund’s books and records to reflect the terms of such Person’s Capital Contribution and the changes to the Percentage Interests and Tranche Participation Percentages.
      6. Any Capital Contributions of a Member not used to make Investments, Follow-O Investments or for the payment or reserve for payment of costs related to Proceedings and Fund Expenses as permitted in this Agreement shall be returned to such Member without interest.
   2. Liability of Members. The liability of the Members will be limited to the fullest extent permitted by applicable law. Except as required under the applicable law or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation or liability of the Fund, whether that liability or obligation arises in contract, tort or otherwise. In no event shall any Member (or former Member) have any liability for the repayment or discharge of the debts and obligations of the Fund or be obligated to make any contribution to the Fund; provided, however, that:
      1. each Member shall pay to the Fund such Member’s proportionate share of liabilities of the Fund (including any taxes that may be payable if the Fund shall be found to be an entity separately subject to any taxes and any indemnification obligation of the Fund) incurred in respect of any period on or after the date hereof during which such Member is or was a Member of the Fund; provided, however, that (i) no Member shall be required to make payment pursuant to this clause (a) unless, and then only to the extent that, a call for payment is made by the Manager; (ii) a Member’s aggregate liability to the Fund under this clause (a) shall in no event exceed the aggregate amount distributed to such Member by the Fund; (iii) prior to requiring any Member to make any payment to the Fund pursuant to this clause (a), the Fund shall first apply and exhaust the capital, if any, of the Member in the Fund and/or any reserves established by the Fund; (iv) this clause (a) shall not create any rights in, or inure to the benefit of, any Persons other than the Fund, the Manager and the other Indemnified Parties; and (v) no Member shall be required to make any payment pursuant to this clause (a) in respect of any indemnification obligation of the Fund more than two (2) years after the date of dissolution of the Fund, unless the claim for indemnification has been asserted against the Fund, and the Members have been notified of such claim (which notice shall include a brief description of the claim) prior to the end of such two (2) year period; and
      2. each Member shall have such other liabilities as are expressly provided for in this Agreement.

As used in clause (a) above, “proportionate share” means a percentage equal to such Member’s Percentage Interest in the Net Losses of the Fund during the period in respect of which a liability or obligation is incurred.

* 1. Status Under the Uniform Commercial Code. All Interests in the Fund shall be securities governed by Article 8 of the Uniform Commercial Code as in effect from time to time in the State of Delaware.
  2. Certification. The Interests must be evidenced by certificates and will remain evidenced by certificates. The Fund will keep a register of the Members’ Interests, in which it will record all Transfers of Members’ Interests made in accordance with Article VII of this Agreement. Each certificate or other documents representing Interest shall bear the following legend until such time as the Interest represented thereby is no longer subject to the provisions hereof or such legend is no longer applicable (as determined by the Fund in its sole direction):

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR UNDER ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD, TRANSFERRED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT OR SUCH LAWS AND THE RULES AND REGULATIONS THEREUNDER.

THE VOTING, SALE, TRANSFER, ENCUMBRANCE OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE AMENDED AND RESTATED OPERATING AGREEMENT OF THE COMPANY (AS THE SAME MAY BE AMENDED, MODIFIED, SUPPLEMENTED OR RESTATED FROM TIME TO TIME), A COPY OF WHICH MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE TO THE COMPANY.”

The Fund will not register the Transfer of any Interest until the conditions specified in the foregoing legend and this Agreement are satisfied.

# ARTICLE IV

**CAPITAL ACCOUNTS, ALLOCATIONS, AND DISTRIBUTIONS**

* 1. Capital Accounts.
     1. A separate capital account shall be maintained for each Member (each a “**Capital Account**”) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).
     2. The Fund shall maintain with respect to each Member and for each Tranche by such Member, a separate sub-account (referred to as an **“Tranche Account”**) showing each Member’s interest in the respective Tranche based on the Purchase Price, as such may be adjusted by the Manager in equiable manner and in accordance with this Agreement (**“Tranche Participation Percentage”**) and a sub-account with respect to all of the Fund’s activities not specifically related to any Tranche (the **“Operating Account”**). In general, a Member’s Tranche Accounts are intended to reflect the Member’s participating in each Tranche, and a Member’s Operating Account is intended to reflect the Member’s interest in the Fund not attributable to any Tranche. Each investment by the Fund, including Follow-On Investments, shall be treated as a separate Tranche (with separate Tranche Accounts), unless, in the discretion of the Manager, such treatment is not necessary to reflect the Participating Members’ Interests in the Tranche. Each Participating Member’s Tranche Account with respect to a specific Tranche shall be credited by the Participating Member’s share of any acquisition costs, incomes or gains with respect to the Tranche, and debited by the Participating Member’s share of any losses or distributions with respect to the Tranche. Each Member’s Operating Account shall be credited with its contributions and its share of income and gains, and shall be debited by distributions and its share of losses, not attributable to a specific Tranche. For the avoidance of doubt, all items credited or debited to a Member’s Tranche Account and a Member’s Operating Account shall also be credited to the Member’s Capital Account.
     3. The Capital Account of each Member shall be: (i) increased by contributions of money or property by the Member to the Fund and allocations of income or gain; (ii) decreased by distributions of money or property by the Fund to the Member and allocations of loss or deduction; and (iii) otherwise adjusted in accordance with Treasury Regulations Section 1.704- 1(b)(2)(iv). The Manager may modify the manner in which Capital Accounts are computed as it deems necessary to comply with any applicable law, including Code Section 704(b) and the Treasury Regulations thereunder; provided, that such modifications shall not have a material effect on the amounts distributable to any Member under this Agreement.
     4. With respect to the Capital Account of any Member:
        1. No Member shall have any liability to restore all or any portion of any negative Capital Account.
        2. No Member shall be paid interest on the balance of its Capital Account at any time.
        3. A Member shall not be required to make any Capital Contributions to the Fund other than as provided in this Agreement or to lend any funds to the Fund.
        4. Except as otherwise provided in this Agreement, no Member shall have any right to demand or receive (i) any cash, Portfolio Securities or Fund assets in return of its Capital Contribution or the balance of its Capital Account in respect of its Interest until the dissolution of the Fund or (ii) any distribution from the Fund in any form other than cash.
        5. If an Interest is transferred as permitted by this Agreement, the transferee shall succeed to the Capital Account and applicable Tranche Accounts attributable to the Membership Interest Transferred of the transferor to the extent the Capital Account relates to the transferred Interest in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(1).
        6. A creditor who makes a nonrecourse loan to the Fund shall not have or acquire at any time, solely as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Fund, other than as a creditor or secured creditor, as the case may be, and the rights of such creditor shall be determined by the terms and conditions of the agreement(s) entered into between the Fund and such creditor in connection with the making of such advance(s).
        7. Loans by Members to the Fund shall not be considered Capital Contributions. If any Member advances funds to the Fund in excess of his Capital Contribution, such advances shall not increase the Capital Account balance of such Member. The amount of any such advances shall be a debt of the Fund to such Member and shall be payable or collectible only out of Fund assets in accordance with the terms and conditions upon which such advances are made.
     5. Notwithstanding any other provision of this Agreement, upon the occurrence of a FINRA Event, the Manager shall have the authority, in its sole discretion, with prior Consent of such Member, to restate any Member's Capital Account established pursuant to paragraph 4.1(a) hereof upon the admission of such Member, to any other lower or higher amount which, in the opinion of the Manager, will result in the Fund no longer being deemed to be a “related person” (as such term is defined in FINRA Rule 5110(a)(6)).
     6. The Fund may, at the discretion of the Manager, revalue Fund property as permitted under Treasury Regulations Section 1.704-1(b)(2)(iv)(f). In the event of such a revaluation, the Capital Accounts of the Members shall be adjusted in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and (g).
     7. Limitations on Withdrawal of Capital. Except as expressly provided in this Agreement or as otherwise consented to by the Manager at its sole discretion, no Member shall:
        1. have the right to withdraw or receive any return on such Member's Capital Contributions or Capital Account, or any claim to any Fund capital prior to the termination of the Fund pursuant to Article VIII;
        2. have any right to demand and receive any asset other than cash in return for such Member's Capital Contributions;
        3. be liable to any other Member for the return to such Member of such Member's Capital Contributions, or any portion thereof (except as otherwise expressly required under the Act), it being expressly understood that such return shall be made solely from Fund assets; or
        4. have any claim to distributions (whether of cash or property) or other payments or consideration from or resulting from the liquidation of any assets that are attributable to an Interest other than the Interests held by such Member.
  2. Allocation of Profits and Losses.
     1. Subject to paragraphs 4.3 through 4.6 below, for each Fiscal Quarter or other period, the Fund’s Net Profits or Net Losses, as the case may be, shall be allocated among the Members in such a manner that, immediately after giving effect to such allocations, each Member’s Target Capital Account balance, taking into account all contributions by such Member and distributions to such Member, equals, as nearly as possible, the amount of cash, if any, that would be distributed to such Member if (a) all the Fund’s assets were sold for cash equal to their respective book values (as determined under Treasury Regulations Section 1.704-(b)(2)(iv)), reduced, but not below zero, by the amount of nonrecourse debt to which such assets are subject, (b) all the Fund’s liabilities (other than nonrecourse liabilities) were paid in full, and (c) all the remaining cash were distributed to the Members under paragraph 4.8.
     2. Items of Profit and Loss shall be determined and allocated separately for each Tranche. All items of Profit and Loss attributable to a Tranche shall be allocated as follows:
        1. Items of Loss attributable to the Tranche shall be allocated among the Participating Members in proportion to their Tranche Participation Percentages;
        2. Items of Profit attributable to a Tranche shall be allocated as follows: (x) first, to the Participating Members proportionately as needed so that the aggregate Profits allocated to each Member under this clause 4.2(b) with respect to the Tranche equals the aggregate Losses allocated to the Member with respect to the Tranche under paragraph 4.2(a); (y) second, to the Participating Members proportionately as needed so that the balance in each Participating Member’s Tranche Account equals the amount of the Participating Member’s Net Investment with respect to the Tranche; and (z) Thereafter, A) 80% to the Participating Members (and among them in proportion to their Tranche Participation Percentages); B) 20% to the Manager as set forth in paragraph 4.8(a).
     3. Except as provided in paragraph 8.3(g) and in paragraph 4.2(d), all Profits and Losses not attributable to a Tranche shall be allocated among the Members in accordance with their respective Percentage Interests as then in effect.
     4. Special Allocation of Fund Expense. To the extent that the Manager determines that any cost or expenses incurred by the Fund have been incurred by reason of circumstances applicable to one or more but fewer than all of the Members, the Manager may charge such cost or expense only to those Members whose particular circumstances gave rise to such costs or expenses.
  3. Nonrecourse Deductions, Tax Credits, etc. Nonrecourse deductions (within the meaning of Treasury Regulations Section 1.704-2(b)(1)), tax credits, and other items the allocation of which cannot have economic effect shall be allocated to the Members in accordance with their Percentage Interests.
  4. Section 704(b) Regulatory Allocations. The provisions of the Treasury Regulations under Code Section 704(b) relating to qualified income offset, minimum gain chargeback, minimum gain chargeback with respect to Member nonrecourse debt, allocations of nonrecourse deductions, allocations with respect to Member nonrecourse debt, limitations on allocations of losses to cause or increase a Capital Account deficit, and forfeiture allocations with respect to substantially nonvested partnership interests are hereby incorporated by reference and shall be applied to the allocation of income, gain, loss, or deduction in the manner provided in the Treasury Regulations. The Manager may, in its sole discretion, adjust the subsequent allocations of income, gain, losses, or deduction to prevent distortion of the economic arrangement of the Member, as otherwise described in this Agreement, due to allocations resulting from the preceding sentence.
  5. Tax Allocations.
     1. A Member’s distributive share shall be deemed to consist of a pro rata portion of each item of income, gain, loss, or deduction required to be separately stated under Code Section 702(a).
     2. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, and by such methods (including but not limited to adjustments described in Treasury Regulations Sections 1.704-3(c)(ii) and (iii)(B)) determined by the Manager, allocations of items of income, gain, loss, or deduction for income tax purposes shall take into account any variation between the adjusted tax basis of Fund property and the book value of such property as determined for purposes of maintaining Capital Accounts.
  6. Transfer or Change of Interests. If any Interests in are newly issued, reserved, transferred, forfeited, or redeemed during a Fiscal Quarter, the Manager shall adjust allocations of income, gain, loss, deduction, and credit to take account of the varying interests of the Members in any manner consistent with Code Section 706 and the Treasury Regulations thereunder.
  7. Determinations by Manager. All matters concerning the computation of Capital Accounts, the allocation of items of Fund’s income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement will be determined by the Manager in its sole discretion. Such determinations will be final and conclusive as to all the Members. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Manager will determine, in its sole discretion, that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intent of the Members, the Manager may make such modification.
  8. Distributions.
     1. Subject to paragraphs 4.9, and 4.10, the Fund shall make distributions, at such times and intervals as the Manager shall determine but in no event later than thirty (30) calendar days following the date of a Disposition with respect to any Realized Investment resulting in cash or Marketable Securities with no trading restrictions resulting from receipt attributable to, or proceeds from the Disposition of, a Tranche. Dispositions with respect to any Realized Investment shall be initially apportioned among the Participating Members in proportion to their Tranche Participation Percentage. The amount so apportioned shall be distributed between the Manager and such Participating Member as follows:
     2. **Return of Capital:** First, 100% to the Participating Members with respect to such Tranche who have Net Investment Amounts, in proportion to their relative amounts of Net Investment attributable to the Tranche, until the Net Investment of each Participating Member with respect to such Tranche has been reduced to zero;
     3. **Split:** Thereafter, any balance will be distributed to (i) the Member’s Percentage to each Participating Member; the Manager’s Percentage to the Manager. The distributions described in this paragraph 4.8(a)(ii) shall constitute the **“Carried Interest”** with respect to such Tranche allocated to the Manager.
     4. Any amounts not attributable to or resulting from the Disposition of a Tranche shall be distributed to the Members in proportion to their relative Operating Account balances.
     5. Distributions pursuant to this Article IV may be made in cash or, in the sole discretion of the Manager, in Marketable Securities (as hereinafter defined) that satisfy the further requirements described below, except that no distribution of securities shall be made to any Member to the extent such Member would be prohibited by applicable law from holding such securities. Each distribution in kind of Marketable Securities shall be distributed as if there had been a Disposition of such securities for an amount of cash equal to the Fair Market Value of such securities followed by an immediate distribution of such cash proceeds.” “**Marketable Securities**” shall mean securities (i) of which the Fund’s holding may be sold in one or more transactions to the general public (notwithstanding any restrictions on the sale of such securities pursuant to agreement, contract or otherwise) without the necessity of any federal, state or local government filing (other than notice filings), whether pursuant to Rule 144 under the 1933 Act or otherwise, and (ii) that are either (A) listed on a United States national or regional securities exchange or any internationally recognized securities exchange, or (B) traded on any recognized United States or internationally recognized automated quotation system, listing service or other form of securities exchange or trading forum. Distributions consisting of both cash and Marketable Securities shall be made, to the extent practicable, in pro rata portions as to each Member receiving such distributions. The Manager may request, but no Member shall be required to give, a proxy with respect to any securities so distributed.
  9. Tax Advances. Prior to making distributions under paragraph 4.8, and subject to the maintenance of reasonable cash reserves, the Fund shall use reasonable efforts to distribute to the Manager, prior to the due date for making quarterly federal and state estimated income tax payments, amounts that, in the aggregate, approximate the income taxes payable by the Manager (or any Person whose tax liability is determined by reference to the income of the Manager) with respect to taxable income or gain allocated to the Manager by reason of paragraph 4.8, determined by using the combined marginal federal, state and local income tax rates then applicable, taking into account the type of income allocated and any previously allocated taxable losses that may offset later taxable income. Any payment made under this paragraph 4.9 shall be treated as an advance against distributions otherwise to be made to the Manager under this Agreement and shall be reimbursed by reducing, dollar-for-dollar, amounts to be distributed to the Manager under this Agreement. Any amounts not so reimbursed after the liquidation of the Fund and the application of paragraphs 8.3 shall be repaid by the Manager to the Fund.
  10. Withholding.
      1. The Fund shall withhold from payments and distributions to a Member and remit to the appropriate government authority any amounts required to be withheld under the Code, Treasury Regulations, or state, local, or foreign tax law, and each Member hereby authorizes the Fund to withhold from or pay on behalf of or with respect to such Member any amount of U.S. federal, state, local or foreign taxes that the Manager determines that the Fund is required to withhold or pay with respect to such Member. All amounts so withheld shall be treated as paid or distributed, as the case may be, to the Member for all purposes of this Agreement. In addition, the Fund may withhold from distributions amounts deemed necessary, in the reasonable discretion of the Manager, to be held in reserve for payment of accrued or foreseeable expenses.
      2. Each Member hereby agrees to indemnify and hold harmless the Fund from and against any liability with respect to income attributable to or distributions or other payments to such Member. To the extent that the Code, Treasury Regulations, or state, local, or foreign tax law requires the Fund to remit to a governmental authority an amount with respect to a Member that exceeds the amount then otherwise distributable to such Member, (i) the excess shall constitute a loan from the Fund to such Member which shall be payable upon demand and shall bear interest, from the date that the Fund makes the payment to the relevant governmental authority, at the lesser of (a) the one-month LIBOR plus four percent (4%) or (b) the maximum legal interest rate under applicable law, compounded annually, (ii) the Fund shall be entitled to collect such sum from amounts otherwise distributable to such Member under this Agreement, and (iii) the Fund may exercise any and all rights and remedies to collect such sum from such Member that a creditor would have to collect a debt from a debtor under applicable law. Any payment made by a Member to the Fund pursuant to this paragraph 4.10(b) shall not constitute a Capital Contribution.

# ARTICLE V

**RIGHTS AND DUTIES OF THE MANAGER**

* 1. Management.
     1. Manager. Except as (a) otherwise expressly provided in this Agreement, (b) provided by the Act, or (c) for situations in which the approval of one or more Members is expressly and specifically required by the terms of this Agreement, the power and authority to manage, direct and control the Fund will be vested in the Manager. The Manager will be responsible for the day-to-day operations of the Fund subject to the provisions of Article V of this Agreement. The Manager shall have no obligation to make any Capital Contribution to the Fund for its Membership Interest, if any. The name, address and Capital Contribution (if any) of the Manager are set forth on the applicable a member schedule attached (the “**Schedule A**”).
     2. The Manager is hereby vested with the full, exclusive and complete right, power and discretion to operate, manage and control the affairs and business of the Fund and to make all decisions affecting the Fund’s affairs and business, as deemed proper, convenient or advisable by the Manager to carry on the business of the Fund as described herein, and the Manager shall have all of the rights and powers of a “manager” under the Act and otherwise as provided by law. Without limiting the generality of the foregoing, the Manager will have all specific rights and powers required or appropriate to manage the Fund, including, without limitation, the power and authority to do the following (except to the extent that any of the following powers are specifically limited or restricted by any other provision of this Agreement):
        1. direct the formulation of investment policies and strategies for the Fund, including, but not limited to, managing and administering Investments actually made by the Fund and the ultimate realization of those Investments and providing, or arranging for the provision of, managerial assistance to the Persons in which the Fund holds Investments;
        2. originate the Fund’s Investments;
     3. make Investments consistent with the purposes of the Fund;
     4. sell all or any part of any Investment whether for cash, securities, property or on other terms;
     5. sell, invest in, trade or dispose of Investments;
     6. exercise all rights of the Fund with respect to its interest in any Person, including the voting of Portfolio Securities;
     7. approve or adopt the Fund Budget;
     8. open, maintain and close bank accounts and draw checks or other orders for payment of monies;
     9. open, maintain and close accounts, including margin accounts, with brokers, dealers and others, and issue all instructions regarding Investments;
     10. deposit, withdraw, pay, retain and distribute the Fund's assets in any manner consistent with the provisions of this Agreement,
     11. participation in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters;
     12. pay, or otherwise cause the payment of, distributions/allocations to the Members and expenses of the Fund;
     13. perform, or arrange for the performance of the management and administrative services necessary for the operations of the Fund and the management of the investment of the Fund’s funds prior to their investment in Investments;
     14. incur all expenditures permitted by this Agreement, and, to the extent that funds of the Fund are available, pay all expenses, debts and obligations of the Fund;
     15. engage appraisers or such other professionals to provide valuations of Investments and/or Membership Interests;
     16. withhold and pay all taxes, licenses, or assessments or whatever kind or nature imposed upon or against the Fund, and for such purposes to make such returns and do all other such acts or things as are necessary or advisable;
     17. have and maintain one or more offices within or without the State of Delaware and do such things as may be necessary or advisable in connection with the maintenance of such office or offices;
     18. employ and dismiss from employment any and all employees, consultants, custodians of the assets of the Fund or other agents;
     19. enter into, execute, amend, supplement, acknowledge and deliver any and all contracts, agreements or other instruments as the Manager shall determine to be appropriate in furtherance of the purposes of the Fund;
     20. admit additional Members on the terms and conditions set forth in this Agreement;
     21. waive, alter or amend any or all fees or expenses that may be due or payable by a Member in connection with a Member’s Capital Contribution;
     22. consent to the Transfer of a Membership Interest;
     23. admit an assignee of all or any fraction of a Membership Interest to be a Substituted Member in the Fund pursuant to and subject to the terms of Article VII;
     24. make any reasonable election under federal and state tax laws;
     25. designate a Member to act as the “tax matters partner” of the Fund, as such term is defined in Section 6231(a)(7) of the Code;
     26. retain an outside administrator to provide administrative services to the Fund;
     27. retain outside tax consultants, legal counsel, appraisers and independent auditors for the Fund;
     28. commence and defend actions and proceedings at law or in equity before any governmental, administrative or other regulatory body or commission;
     29. cause the Fund at any time and from time to time to raise capital through Offerings, or causing Interests to be offered and sold, in accordance with the provisions hereof and subscription agreements for any such Offerings and to admit Members to the Fund from time to time on a “rolling admission” basis;
     30. waive or reduce, in whole or in part, any notice period, minimum amount requirement, or other limitation or restriction imposed on Capital Contributions, withdrawals of capital, any fee, any special distribution to the Manager and/or any requirement imposed on a Member by this Agreement, regardless of whether such notice period, minimum amount, limitation, restriction, withdrawal provision, fee, special distribution or other requirement of this Agreement, or the waiver or reduction thereof, operates for the benefit of the Fund, the Manager or fewer than all the Members and no notice is required to be given and/or vote and/or consent is required to be obtained from any Member;
     31. authorize any manager, officer, employee or other agent of the Manager or agent or employee of the Fund or Manager to act for or on behalf of the Fund in all matters, incidental to the foregoing;
     32. make reasonable due diligence, control the fulfillment of regulatory requirements to potential Members for being “Accredited Investor” and “Qualified Client”, and
     33. carry on directly and/or indirectly any other activities necessary or incidental to, or in connection with, any of the foregoing or the Fund's business.
     34. The expression of any power or authority of the Manager in this Agreement shall not in any way limit or exclude any other power or authority which is not specifically or expressly set forth in this Agreement.
     35. Third parties dealing with the Fund may rely conclusively upon any certificate of the Manager to the effect that it is acting on behalf of the Fund. The signature of the Manager shall be sufficient to bind the Fund in every manner to any agreement or on any document, including, but not limited to, documents drawn or agreements made in connection with the acquisition or disposition of any Investments or other properties in furtherance of the purposes of the Fund.
  2. Limitation of Authority.
     1. Notwithstanding anything to the contrary contained in this Agreement and as specified in this Agreement, the following matters will require the consent of the Majority-In-Interest:
     2. any merger, reorganization, consolidation, dissolution or similar restructuring of the Fund;
     3. approval of the Drag-Along Transaction;
     4. amendment of the Agreement as specified in Article IX of this Agreement;
     5. appointment of a Liquidating Trustee(s);
     6. appoint a successor Manager;
     7. incur of indebtedness by the Fund in excess of $5,000 per month and $50,000 per year;
     8. any loan by the Fund to any Person, or any guaranty by the Fund of any other Person’s obligations;
     9. any other decision or taking any action with respect to the Fund that specifically requires the approval of the Majority-In-Interest pursuant to this Agreement.
  3. Duties and Obligations of the Manager.
     1. The Manager shall take all actions that may be necessary or appropriate for the continuation of the Fund’s valid existence and authority to do business as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such authority to do business is, in the judgment of the Manager, necessary or advisable.
     2. The Manager shall prepare or cause to be prepared and shall file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Fund.
     3. The Manager shall cause the Fund to pay any taxes payable by the Fund (it being understood that the expenses of preparation and filing of such tax returns, and the amounts of such taxes, are expenses of the Fund); provided, however, that the Manager shall not be required to cause the Fund to pay any tax so long as the Manager or the Fund is in good faith and by appropriate legal proceedings contesting the validity, applicability or amount thereof and such contest does not materially endanger any right or interest of the Fund.
  4. Fiduciary Duties. Notwithstanding anything herein to the contrary, the Manager does not, shall not and will not owe any fiduciary duties of any kind whatsoever to the Fund, or to any of the Members, by virtue of its role as the Manager, including, but not limited to, the duties of due care and loyalty, whether such duties were established as of the date of this Agreement or any time hereafter, and whether established under common law, at equity or legislatively defined. It is the intention of the parties to this Agreement that any such fiduciary duties be affirmatively eliminated as permitted by Delaware law and under the Act, and the Members hereby waive any rights with respect to such fiduciary duties.
  5. Activities of Manager; Other Ventures.
     1. The Manager and its Affiliates (including any members, partners, officers, directors and equity holder of such Persons), employees or other agents shall devote so much of their time to the affairs of the Fund as in the sole judgment of the Manager the conduct of the Fund's business shall reasonable require, and the Manager shall not be obligated to do or perform any act or thing in connection with the business of the Fund not expressly set forth herein or in any agreements ancillary hereto. Nothing contained herein shall be deemed to preclude the Manager or, as the case may be, any of its Affiliates, employees or other agents from engaging directly or indirectly in any other business, or from directly or indirectly purchasing, selling and holding Portfolio Securities for the accounts of any Persons other than the Fund, for their own accounts and/or for the accounts of Affiliates of the Fund, as well as establishing and operating other entities engaged in a similar “investment partnership” business.
     2. Neither the Manager or Members nor any of their Affiliates shall be obligated to present any particular investment opportunity to the Fund. The Manager, Members, and their Affiliates shall each have the right to take for their own account (individually or as a trustee, partner or fiduciary), or to recommend to others, any particular investment opportunity including investments in Portfolio. The Members hereby expressly waive any claim of conflict of interest or similar claim arising out of or related to any transactions entered into by the Manager, other Members and/or its Affiliates related to Portfolio Securities.
  6. Expenses, Reimbursement, and Fees to the Manager.
     1. Expenses to be borne by the Fund (**“Fund Expenses”**) shall include the following costs and expenses associated with the formation, operation, dissolution, winding-up, or termination of the Fund, reasonably incurred by the Fund: (i) all out-of-pocket expenses associated with the organization of the Fund, or the syndication of interests therein; (ii) legal, accounting, audit, custodial and other professional fees as well as consulting fees relating to services rendered to the Fund; (iii) banking, brokerage, broken-deal, registration, qualification, finders, depositary and similar fees or commissions; (iv) Transfer, capital and other taxes, duties and costs incurred in acquiring, holding, selling or otherwise disposing of Fund’s assets; (v) insurance premiums, indemnifications, costs of litigation and other extraordinary expenses; (vi) costs of financial statements and other reports to the Members as well as costs of all governmental returns, reports and other filings; (vii) costs of meetings of the Members (including the reasonable travel and other out-of-pocket costs incurred by the Manager in attending such meetings); (viii) interest expenses; (ix) amounts paid to or for the benefit of Portfolio Company other than as capital contributions thereto or in exchange for Portfolio Securities issued thereby; (x) all costs associated with the liquidating trust; (xi) advertising and public notice costs; (xii) expenses incurred in investigating, evaluating or monitoring Portfolio Securities and communicating with potential sellers of Portfolio Securities including but not limited to reasonable travel expenses, and (xiii) any other expenses not listed in the preceding clauses (i) through (xii) that are not normal operating expenses of the Manager.
     2. The Fund is authorized to pay Expenses directly and/or to reimburse the Manager for the payment thereof, as the case may be. The Manager shall allocate such expenses among the Investments and other Fund income as the Manager may reasonably determine and/or as set forth in this Agreement. Expenses will generally be borne by the Members as a whole, pro rata their relative Operating Accounts, unless the Manager determines that such expenses should be apportioned to particular Tranches in its discretion.
     3. Fees to the Manager. During the term of the Fund, the Fund shall pay to the Manager: (i) a management fee in such amount and on such terms as set forth in the Investment Management Agreement (the “**Management Fee**”); the Set Up Fee in such terms as set forth in the Subscription Agreement; and (iii) the Carried Interest as set forth in paragraph 4.8(a) of this Agreement. The Manager, in its sole discretion, may waive or reduce the Management Fee, the Set Up Fee or the Carried Interest with respect to one or more Members for any period of time, or agree to apply a different Management Fee, Set Up Fee and Carried Interest for that Member (all such arrangements in the form of a rebate or otherwise).
  7. Limited Liability and Indemnification
     1. The liability of the Members and the Manager will be limited to the fullest extent permitted by applicable law. Except as required under the Act or as expressly set forth in this Agreement, no Member or Manager shall be personally liable for any debt, obligation or liability of the Fund, whether that liability or obligation arises in contract, tort or otherwise. To the maximum extent permitted by applicable law, except as otherwise provided herein or in any agreement entered into by such Person and the Fund, (a) no Manager and no Member and none of their respective Affiliates, directors, employees, agents and representatives shall be liable to the Fund or to any Member for any act or omission performed or omitted by such Person in its capacity as a Member or Manager; and (b) the Fund and each Member hereby waives any claim or cause of action against the Manager and each Member and their respective Affiliates, directors, employees, agents and representatives for any breach of any duty to the Fund or its Members by any such Person, including, without limitation, as may result from any conflict of interest, including a conflict of interest between the Fund or its Members or any such Person or otherwise, any breach of any duty; provided that, with respect to actions or omissions by the Manager, such waiver shall not apply to the extent the act or omission was attributable to such Manager’s fraud, willful misconduct or gross negligence in each case, as determined by a final non-appealable judgment, order or decree of a court of competent jurisdiction. The Manager may consult with legal counsel and accountants in respect of Fund affairs and shall be fully protected and justified in any action or inaction which is taken or omitted in good faith, in reliance upon and in accordance with the opinion or advice of such counsel or accountants.
     2. The Fund shall, to the fullest extent permitted by law, out of the Fund’s assets, indemnify and hold harmless each of the Indemnified Parties, and the Fund may, in the sole discretion of the Manager, to the fullest extent permitted by law, out of the assets of the Fund, indemnify and hold harmless (i) employees and agents of the Fund, (ii) officers, directors, and board observers of portfolio companies in which the Fund has made Investments, and (iii) any Person who serves at the request of the Fund or the Manager on behalf of the Fund as an advisor, officer, director, board observer, employee or agent of any Portfolio Company (and each of their respective heirs and legal and personal representatives), in each case who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Fund or any of the Members), by reason of any actions or omissions or alleged actions or omissions arising out of such Person’s activities either on behalf of the Fund or in furtherance of the interests of the Fund or arising out of or in connection with such Person’s activities as a Manager, an Affiliate of the Manager or as the Liquidating Trustee, if such activities were performed in good faith either on behalf of the Fund or in furtherance of the interests of the Fund and in a manner reasonably believed by such Person to be within the scope of the authority conferred by this Agreement or by law, against losses, damages and expenses (which shall in each case be advanced as and when incurred) for which such Person has not otherwise been reimbursed (including attorneys’ fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such Person in connection with such action, suit or proceeding; provided, that any Person entitled to indemnification from the Fund hereunder, shall obtain the written Consent of the Manager prior to entering into any compromise or settlement that would result in an obligation of the Fund to indemnify such Person.
     3. The Fund shall, to the fullest extent permitted by law, out of the Fund’s assets, indemnify and hold harmless each member of the Manager (and its heirs and legal and personal representatives) who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Fund or any of the Members), by reason of any actions or omissions or alleged acts or omissions arising out of such Person’s activities in connection with serving as a member of the Manager against losses, damages and expenses (which shall in each case be advanced as incurred) for which such Person has not otherwise been reimbursed (including attorney’s fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such Person in connection with such action, suit or proceeding; provided, that any Person entitled to indemnification from the Fund hereunder shall first seek recovery under any insurance policies by which such Person is covered and shall obtain the written Consent of the Manager prior to entering into any compromise or settlement which would result in an obligation of the Fund to indemnify such Person. If an Indemnified Party becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with this Agreement or the Fund’s business or affairs, the Fund may, in the discretion of the Manager, advance to any Indemnified Party reasonable legal and other expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith; *provided* that such Indemnified Party shall provide the Fund with an undertaking to promptly repay to the Fund the amount of any such advanced expenses paid to it if it shall ultimately be determined that such Indemnified Party was not entitled to be indemnified by the Fund in connection with such action, proceeding or investigation. Notwithstanding the provisions of this paragraph, no indemnification under this paragraph may be provided to, or on behalf of, any Indemnified Party if a judgment or other final adjudication adverse to Indemnified Party establishes that the actions taken by the Indemnified Party were the result of fraud, willful misconduct or gross negligence in each case, as determined by a final non-appealable judgment, order or decree of a court of competent jurisdiction.
     4. The Fund shall have the power to purchase and maintain insurance on behalf of any present or future Indemnified Party (each an “**Insured Party**”) against any liability asserted against such Insured Party by reason of actions or omissions or alleged actions or omissions taken or omitted to be taken by the Insured Party in connection with the Fund and its business and affairs (including insurance against liability for any breach or alleged breach of its fiduciary responsibilities), whether or not the Fund would have the power to indemnify such Insured Party against such liability under this Article V.
     5. Notwithstanding anything to the contrary contained herein, any indemnity to an Indemnified Party provided herein shall be junior to any indemnity provided by a Portfolio Company of the Fund. Additionally, the Fund shall have the right of subrogation with respect to the rights of an Indemnified Party against any Portfolio Company of the Fund.
     6. Any indemnification pursuant to this paragraph 5.7 will be made only out of the assets of the Fund and will in no event cause any Member to incur any personal liability nor will it result in any liability of the Members to the Fund or any third party beyond such Member’s Capital Account nor shall any Member be required to make additional Capital Contributions to help satisfy such indemnity of the Fund.
  8. Conflicts of Interest. There are potential conflicts of interest between the Fund and other investment funds managed by the Manager or its Affiliates. Certain investment opportunities may be appropriate for the Fund or such other investment funds or for co-investment by the Fund and such other investment funds, in which case the Manager shall use its discretion in allocating such opportunities among the Fund and such other investment funds. In addition, neither the Manager nor any of its Affiliates or employees is obligated to share any investment opportunity that the Manager believes, in its discretion and based on its reasonable business judgment, does not satisfy the Fund’s investment criteria.
  9. Interested Manager(s). No contract or other transaction between the Fund and a Manager, or between the Fund and any other Person in which a Manager is a manager, officer, or director, or has a substantial financial interest, shall be either void or voidable if such contract was fair and reasonable to the Fund in accordance with the Act.
  10. Related Party Transactions. For purposes of this Agreement, no action or failure to act on the part of any Related Person in connection with the management or conduct of the business and affairs of such Related Person or any other Related Person and other activities of such Related Person which involve a conflict of interest with the Fund, any Portfolio Company, secondary sources, any other Person in which the Fund has a direct or indirect interest, or any Member (or any of their respective Affiliates) in which such Related Person realizes a profit or has an interest shall constitute, per se, bad faith, gross negligence, intentional misconduct, a material breach of this Agreement or a knowing violation of law.
  11. Not Liable for Return of Capital. The Manager does not guarantee the return of the Members’ Capital Contributions or a profit for the Members from the operations of the Fund. Neither the Manager nor any other Related Person shall be personally liable for the return of the Capital Contributions of any Member or any portion thereof or interest thereon, and such return shall be made solely from available Fund assets, if any.
  12. Transactions with Affiliates Acknowledgment; Reimbursement of Expenses.
      1. The Manager shall have the authority to engage any other Member, Affiliate, company, Person and/or Related Person to provide services (including, without limitation, brokerage and investment banking services) to the Fund, provided that the costs of such services are on terms no less favorable to the Fund than the Fund could obtain from an unrelated third party providing similar services and that such services are obtained in accordance with applicable law.
      2. The Fund shall pay, or reimburse the Manager for, all expenses incurred by the Fund in the ordinary and usual course of business with a limit set in the Fund Budget. The Fund shall also pay, or reimburse the Manager for, all costs and expenses incurred in the organization of the Fund and the sale of the Interests including, without limitation, legal and accounting fees, expenses of printing and mailing, costs of regulatory compliance with securities laws and all other related miscellaneous costs and expenses. Costs incurred by the Fund in accordance with this Agreement shall be allocated by the Manager among the Interests of the Members on a pro rata basis in accordance with their respective Percentage Interest.
      3. The Members acknowledge by their execution of this Agreement that neither the Fund nor the Manager is registered as a broker/dealer under the Exchange Act (or any state securities laws) or an investment adviser under the Investment Advisers Act. The Members further acknowledge that all services performed under or pursuant to this Agreement by the Manager are in its capacity as manager of the Fund. Accordingly, each of the Members forever waive any rights that he, she or it may have (on his own behalf and on behalf of his heirs, successors or assigns) at law, in equity or otherwise against the Manager and his Affiliates on the basis that neither the Fund nor the Manager is registered as a broker/dealer under the Exchange Act (or any state securities laws) or as an investment adviser under the Investment Advisers Act.

# ARTICLE VI

**RESIGNATION OR REMOVAL OF MANAGER**

* 1. Removal of the Manager. Unless the Manager resigns, dies or is removed, the Manager shall hold office indefinitely. The Manager will cease to be the Manager of the Fund: (i) if the Manager resigns or is dissolved; (ii) if the Manager becomes the subject party in an Event of Bankruptcy; (iii) upon the vote of the Majority-In-Interest of Members in the event of Misconduct by the Manager.
  2. Resignation of the Manager. The Manager may resign or withdraw at any time by giving thirty (30) days' prior written notice to the Fund. The resignation of the Manager shall take effect upon the expiration of thirty days from the date of receipt of such notice or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective.
  3. Successor Manager. The Manager's removal, resignation or withdrawal shall not dissolve or terminate the Fund but rather a successor Manager shall be appointed by the Majority-In-Interest of the Members to serve as, and to perform, the duties of the Manager hereunder effective upon such removal, resignation or withdrawal. Any successor Manager(s) shall have the same rights, duties and obligations as the Manager has with respect to the Fund.

# ARTICLE VII

# TRANSFERABILITY OF A MEMBERSHIP INTERESTS

* 1. Restrictions on Transfers of Interests.
     1. Except for Transfers by a Member made in accordance with the requirements set forth in paragraph 7.2 of this Agreement, no Member shall in any way, directly or indirectly (whether by act, omission or operation of law, whether with or without consideration, whether voluntarily or involuntarily or by operation of law) sale, exchange, transfer, hypothecate, gift, convey in trust, grant a security interest in, pledge, mortgage, assign, encumber, contribute or otherwise dispose of, or by adjudication of the Member as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Interest under judicial order or legal process, carry out or permit the transfer of, all or any portion of such Membership Interest (any of the foregoing, a **“Transfer”**) of all or any fraction of Membership Interest without the prior written consent of the Manager (which consent is in the sole and absolute discretion of the Manager). Any Transfer not expressly permitted herein shall be void and of no effect.
     2. No Transfer may be made that would violate or be inconsistent with any other agreement a Member may have with the Fund or violate of any applicable federal or state securities laws, and no Transfer will be permitted if such transfer would cause the Fund to register any securities of the Fund under any applicable law, or require the Fund to register as an investment company under the Investment Company Act, or require the Fund, the Manager or any Affiliate thereof to register as an investment adviser under the Investment Advisers Act.
     3. The transferor undertakes to pay all expenses incurred by the Fund in connection therewith, including, but not limited to such transfer fee as shall be determined by the Manager.
     4. The Fund shall receive from the Person to whom such Transfer is made i) such documents, instruments and certificates as may be requested by the Manager, pursuant to which the transferee shall become bound by this Agreement, ii) a certificate to the effect that the representations and information required to be furnished pursuant to this Agreement are (except as otherwise disclosed in writing to the Manager) true and correct with respect to such Person, and iii) such other documents, opinions, instruments and certificates as the Manager shall request.
     5. any such transferee shall be an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act and a “qualified client” as that term is defined in Rule 205-3 promulgated under the Investment Advisers Act.
  2. Permitted Transfers. Notwithstanding anything to the contrary in paragraph 7.1(a), but subject to paragraphs from 7.1(b) and through paragraph 7.1.(e) the following Transfers may be made without the prior written Consent of the Manager: i) to another Member, ii) in the case of a Member who is a natural person, to such Member's spouse, children or grandchildren (collectively, “**Family Members**” and, individually a “**Family Member**”) or any trust, limited partnership or limited liability company primarily for the benefit of a Family Member or Family Members; or iii) in the case of a Member who is not a natural person, to any partner, parent, subsidiary or Affiliate of such Member.
  3. Admission of Transferee as a Member. One or more additional Members of the Fund may be admitted to the Fund with the written Consent of the Manager. An additional Member and a transferee of a Membership Interest desiring to be admitted as a Member must execute a counterpart of, or an agreement adopting, this Agreement. Provided the transfer complies with the provisions of paragraph 7.1, such admission shall be deemed effective at the time of the transfer designated by the Manager and, if the transfer is of all of a Member’s Membership Interest, immediately following such admission, the transferor Member (in the case of a transfer of all of such transferor Membership Interest) shall cease to be a member of the Fund. Upon admission of an additional Member or transferee as a Member, such additional transferee shall have the rights, powers and duties and shall be subject to the restrictions and obligations of a Member under this Agreement and the Act.
  4. Drag-Along Rights.

1. The Major Investor shall have the right, at its option exercisable in its sole and absolute discretion, to require all other Members (for the purposes of this paragraph 7.4, each a **“Dragged Member”**) to sell all (but not less than all) of such Dragged Member’s Interest, or in the event the Drag-Along Transaction is a sale of assets, participate in to the full extent of such Dragged Member’s Interest, a Drag-Along Transaction (such rights, the **“Drag-Along Rights”**); provided, that, in connection with any such Drag-Along Transaction: (i) the terms of the Drag-Along Transaction and the third-party purchaser shall be approved by the Manager; (ii) the Majority-In-Interest shall approve or Consent to the Drag-Along Transaction; and (ii) as a result of the Drag-Along Transaction, the Dragged Members shall receive investment returns in amount not less than the Target Investment Return.
2. If the Major Investor exercises its Drag-Along Rights under paragraph 7.4(a), it shall notify each Dragged Member and the Fund in writing of the proposed Drag-Along Transaction no less than thirty (30) calendar days prior to the contemplated consummation date of the proposed Drag-Along Transaction (the **“Drag-Along Notice”**). Any such Drag-Along Notice shall set forth: (i) a description of the proposed Drag-Along Transaction, (ii) the identity of the proposed Transferee and (iii) the proposed amount and form of consideration and terms and conditions of payment offered by the proposed Transferee. Any proposed Transfer or Drag-Along Transaction pursuant to this paragraph 7.4 that is not consummated within one-hundred eighty (180) days following the date of the Drag-Along Notice shall again be subject to the notice provisions of this paragraph 7.4(b). The Major Investor may rescind any Drag-Along Notice at any time.
3. Except as set forth in this paragraph, each Dragged Member shall be required to participate in the Drag-Along Transaction on the terms and conditions set forth in the Drag-Along Notice. All Dragged Members shall cooperate in, and shall take all actions that the Major Investor deems reasonably necessary or desirable to consummate the Transfers contemplated by this paragraph 7.4, including, (i) voting (and if applicable, causing each of its Affiliates to vote) their respective Interest in favor of the Drag-Along Transaction, (ii) voting (and if applicable, causing each of its Affiliates to vote) their respective Interest in opposition to any and all other proposals that could oppose, prevent, delay, or impair the Majority Investor’s ability to close the Drag-Along Transaction, (iii) refraining from depositing (and if applicable causing each of its Affiliates to refrain from depositing) any Interest in a voting trust or subjecting any such Interest to any arrangement or agreement with respect to voting any such Interest, unless the Majority Investor specifically so requests in connection with the Drag-Along Transaction and (iv) entering into a definitive purchase or merger agreement with the Majority Investor and the proposed Transferee and all other agreements, documents and instruments relating to the Drag-Along Transaction in the form presented by the Majority Investor as may be reasonably requested by the Majority Investor and consistent with the terms hereof.
4. All reasonable costs and expenses incurred by the Fund and the Members in connection with any Drag-Along Transaction (whether or not consummated), including all reasonable attorneys’ fees and expenses, all accounting fees and expenses and all finders, brokerage or investment banking fees, expenses or commissions, shall be borne pro-rata by the Members in accordance with their Percentage Interests; provided that any expenses incurred by the Fund or a Member for the sole benefit of such Member shall be borne entirely by such Member.
5. No Dragged Member will be obligated to make any representations or warranties in connection with the Drag-Along Transaction, except as to (i) good and valid title to the Interest being Transferred; (ii) the absence of liens, with respect to the Interest being Transferred; (iii) such Dragged Member’s valid existence and good standing (if applicable); (iv) the legal capacity and authority for, and validity, binding effect and enforceability of (as against such Dragged Member), any agreement entered into by such Dragged Member in connection with the Drag-Along Transaction; (v) all required consents and approvals to the Dragged Member’s Transfer of such Interest having been obtained (excluding securities laws); and (vi) the fact that no broker’s commission or finder’s fee is payable by the Dragged Member as a result of the Dragged Member’s conduct in connection with the Drag-Along Transaction. All representations and warranties made by any Dragged Member in connection with the Drag-Along Transaction shall be on a several and not joint basis.

# ARTICLE VIII

**TERM, DISSOLUTION, LIQUIDATION AND TERMINATION OF THE FUND**

* 1. Term. The term of the Fund shall be perpetual, unless sooner dissolved and liquidated in accordance with the provisions hereof. All provisions of this Agreement relating to dissolution and liquidation shall be cumulative; that is, the exercise or use of one of the provisions hereof shall not preclude the exercise or use of any other provision.
  2. Death, Incompetency, Bankruptcy, Disability or Dissolution of a Member. The death, adjudication of incompetency, bankruptcy, disability, termination or dissolution of a Member shall not dissolve or terminate the Fund. The legal representative of any such Member shall succeed as assignee to the Membership Interest in the Fund but shall not be admitted as a Member unless the requirements of paragraph 7.1 are met.
  3. Dissolution.
     1. The Fund shall be dissolved and its affairs wound up upon the happening of any of the following events:
        1. the sale or other disposition of all or substantially all of the Fund's assets and the collection of all the proceeds therefrom;
        2. the entry of a decree of judicial dissolution under Act;
        3. the determination of the Manager subject to the consent of the Majority-in-Interest of the Members; or
        4. the unanimous determination of the Members.
     2. Dissolution of the Fund shall be effective on the day on which the event giving rise to the dissolution occurs, but the Fund shall not terminate until the assets of the Fund have been distributed as provided in paragraph 8.3 and the Certificate of Formation of the Fund has been cancelled (or the equivalent thereof).
     3. Upon dissolution of the Fund, the Fund shall be terminated, and the Manager, or if there is no Manager, such other Person(s) appointed in accordance with applicable law and this Agreement to wind up the Fund's affairs (the “**Liquidating Trustee(s)**”) shall liquidate the assets of the Fund as promptly as possible, but in an orderly and businesslike manner so as to not involve undue sacrifice.
     4. The costs of liquidation will be borne as a Fund expense. Until final distribution, the Liquidating Trustee will continue to operate the Fund properties with all of the power and authority of the Members. The steps to be accomplished by the Liquidating Trustee are as follows:
     5. Accounting. As promptly as possible after dissolution and after final liquidation, the Liquidating Trustee will cause a proper accounting to be made by a recognized firm of certified public accountants of the Fund’s assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.
     6. The Liquidating Trustee shall either cause Fund’s assets to be sold or distributed, and, if sold, as promptly as is consistent with obtaining the Fair Market Value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in paragraph 8.3(g).
     7. Order of Payment. The proceeds of liquidation shall be applied and distributed in the following order of priority:
        1. first, to the payment of the debts and liabilities of the Fund (other than any loans or advances made by any of the Members to the Fund) and the expenses of liquidation;
        2. second, to the creation of any reserves that the Liquidating Trustee(s) deem(s) reasonably necessary for the payment of any contingent or unforeseen liabilities or obligations of the arising out of or in connection with the business and operation of the Fund;
        3. third, to the payment of any loans or advances made by any of the Members to the Fund; and
        4. thereafter, to the Members in accordance with their respective distribution priorities set forth in, and after making all allocations required by Article IV of this Agreement.
     8. If any assets of the Fund are to be distributed in kind, the Fair Market Value of such assets as of the date of dissolution shall be determined by the Independent Appraiser. Such assets shall be deemed to have been sold as of the date of dissolution for their Fair Market Value.
     9. Except as provided by law or as expressly provided in this Agreement, upon dissolution of the Fund, each Member shall look solely to the assets of the Fund for the return of its Capital Contribution. If the Fund’s property remaining after the payment or discharge of the debts, liabilities and other obligations of the Fund is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.
     10. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Fund and the liquidation of its assets pursuant to this paragraph 8.3 in order to minimize any losses otherwise attendant upon such winding up.
  4. Cancellation of Filing. On completion of the liquidation of the Fund and the distribution of Fund assets as provided herein, the Fund will be terminated (and the Fund shall not be terminated prior to such time), and the Liquidating Trustee will file a certificate of cancellation with the Secretary of State of the State of Delaware, and will take such other actions as may be necessary to terminate the Fund. The Fund shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to paragraph 8.3.
  5. No Action for Dissolution. No Member shall take any voluntary action that causes any dissolution event to occur. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Fund if any Member should bring an action in court to dissolve the Fund under circumstances where dissolution is not required by paragraph 8.3. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Interests. Accordingly, each Member hereby waives and renounces its rights to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Fund or to seek a decree of judicial dissolution of the Fund not in conformity with this Agreement. Damages for breach of this paragraph 8.5 may be offset against any distributions by the Fund to which such Member would otherwise be entitled.

# ARTICLE IX

# AMENDMENTS

* 1. Adoption of Amendments; Limitations Thereon.
     1. This Agreement may be amended as follows: (i) with respect to amendments that affect the entire Fund, this Agreement is subject to amendment only with the written Consent of the Manager and a Majority-in-Interest of the Members; provided, however, that, except as set forth below, no amendment to this Agreement may:
        1. modify the limited liability of a Member; modify the indemnification and exculpation rights of the Indemnified Parties; or increase in any material respect the liabilities or responsibilities of, or diminish in any material respect the rights or protections of, any Member under this Agreement, in each case, without the Consent of each such affected Member;
        2. alter the Interest of any Member in income, gains and losses or amend any portion of Article IV without the Consent of each Member adversely affected by such amendment; provided, however, that the admission of additional Members in accordance with the terms of this Agreement shall not constitute such an alteration or amendment; or
        3. amend any provisions hereof that require the Consent, action or approval of a specified percentage in Interest of the Members without the Consent of such specified percentage in Interest of the Members.
     2. Notwithstanding the limitations of paragraph 9.1(a), this Agreement may be amended from time to time by the Manager without the consent of the Majority-In-Interest (i) to cure any ambiguity or correct or supplement any provisions hereof which may be inconsistent with any other provision hereof, or correct any printing, stenographic or clerical errors or omissions; (ii) to admit one or more additional Members, or withdraw one or more Members, in accordance with the terms of this Agreement; and (iii) to effect any amendment, modification or change that is not adverse to the Members and does not result in non-uniform treatment of the Members (as reasonably determined by the Manager in good faith).
     3. No amendment to this Agreement shall alter, or result in the alteration of, the limited liability of the Members or the status of the Fund as a “partnership” for federal income tax purposes.
     4. Upon the adoption of any amendment to this Agreement, the amendment shall be executed by the Manager and, if required, shall be recorded in the proper records of each jurisdiction in which recordation is necessary for the Fund to conduct business. Any such adopted amendment may be executed by the Manager on behalf of the Members pursuant to the power of attorney granted in paragraph 11.1(a).
     5. In the event this Agreement shall be amended pursuant to this Article IX, the Manager shall amend the Certificate of Formation of the Fund to reflect such change if such amendment is required or if the Manager deems such amendment to be desirable and shall make any other filings or publications required or desirable to reflect such amendment, including any required filing for recordation of any Certificate of Formation or other instrument or similar document.

# ARTICLE X

**CONSENTS, VOTING AND MEETINGS**

* 1. General. There is no requirement hereunder that any annual or other periodic meeting of the Members be held. Rather, the Manager may call a meeting of the Members at any time or from time to time as it shall determine in its sole discretion. Unless otherwise determined by the Manager calling a meeting, all meetings of the Members shall be held at the principal office of the Fund. Any one or more Members may participate at a meeting of the Members by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting. Any Member may participate at any meeting by proxy.
  2. Rights of Members. The Members shall take no part in the management or control of the Fund's business and shall have no right or authority to act for the Fund or to vote on matters other than as may be required by this Agreement.
  3. Quorum. A Majority-in-Interest shall constitute a quorum at all meetings of the Members. When a quorum is once present to organize a meeting, it will not be considered to be broken by the subsequent departure of any Member(s). The Members present at a meeting at which a quorum is not present may adjourn the meeting despite the absence of a quorum.
  4. Notice of Meeting. Notice of all meetings shall be given to the Members entitled to attend such meeting not less than ten (10) calendar, nor more than sixty (60) calendar days before the date of the meeting. Each such Notice shall state the place, date and hour of the meeting and the purpose or purposes for which the meeting was called. Any affidavit of the Manager that the Notice required by this paragraph has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. When a meeting is adjourned to another time or place, it shall not be necessary to give any Notice of the adjourned meeting if the time and place to which the meeting is adjourned is announced at the meeting at which the adjournment is taken. At the adjourned meeting, any business may be transacted that might have been transacted at the original date of the meeting. Notice of a meeting need not be given to any Member who submits a signed waiver of Notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of Notice of such meeting, shall constitute waiver of Notice by such Member.
  5. Action by Members Without a Meeting. Any action that is required or permitted to be taken by vote of the Members may be taken without a meeting, without prior Notice and without a vote, if a consent or consents setting forth the action so taken shall be signed by Members holding Interests constituting not less than the minimum percentage of Interests that would be necessary to authorize such action at a meeting at which all of the Members were present and voted. Each such consent shall bear the date of signature of each Member who signs the consent, and no consent shall be effective to take the action referred to therein unless, within sixty (60) days of the earliest dated consent, consents signed by a sufficient number of Members to take the action are duly given. Prompt Notice of the taking of any action without a meeting by less than unanimous consent shall be given to all of the Members. A consent transmitted by electronic transmission by a Member or by a Person or Persons authorized to act for a Member shall be deemed to be written and signed for purposes of this paragraph.
  6. Record Date. The Persons entitled to notice of and to vote at a Members meeting or by ballot or to take action by a written Consent, and their respective Percentage Interest, shall be determined as of the Record Date for the meeting or the ballot. The Record Date for a meeting shall be a date selected by the Manager not earlier than 60 calendar days before the meeting or the date the ballots or written consents are mailed, as the case may be (the **“Record Date”**). If the Manager does not specify a Record Date for a meeting or ballot or written consent, the Record Date shall be the date on which notice of the meeting or ballot or written consent was first mailed or otherwise transmitted to the Members.
  7. Duties and Obligations of Members. Each Member shall provide or cause to be provided to the Manager, promptly upon request by the Manager, information with respect to such Member and its Affiliates and its and their holdings of Portfolio Securities as the Manager deems necessary or appropriate to complete any tax returns or any reports, schedules, notices, proxy statements and other statements required to be filed by the Fund under the Code or the Exchange Act, the Securities Act or the Rules and Regulations, or for any other purpose. Without limiting the generality of the foregoing, each Member shall provide Internal Revenue Service Form W-8, W-9, 1001 or 4224, as applicable, or any other form as may be reasonably requested by the Manager, promptly following such request.

# ARTICLE XI

# POWER OF ATTORNEY

* 1. Power of Attorney.

1. Each Member, by its execution hereof, hereby irrevocably makes, constitutes and appoints each of the Manager and the Liquidating Trustee, if any, in such capacity as Liquidating Trustee for so long as it acts as such (each is hereinafter referred to as the “**Attorney**”), as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) this Agreement and any amendment to this Agreement that has been adopted as herein provided; (ii) the original Certificate of Formation and all amendments thereto required or permitted by law or the provisions of this Agreement; (iii) all instruments or documents required to effect a transfer of an Interest; (iv) all certificates and other instruments deemed advisable by the Manager or the Liquidating Trustee, if any, to carry out the provisions of this Agreement, and applicable law or to permit the Fund to become or to continue as a limited liability company wherein the Members have limited liability in each jurisdiction where the Fund may be doing business; (v) all instruments that the Manager or the Liquidating Trustee, if any, deems appropriate to reflect a change, modification or termination of this Agreement or the Fund in accordance with this Agreement including, without limitation, the admission of additional Members or Substituted Members pursuant to the provisions of this Agreement, as applicable; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Fund; (vii) all conveyances and other instruments or papers deemed advisable by the Manager or the Liquidating Trustee, if any, including, without limitation, those to effect the dissolution and termination of the Fund, including a Certificate of Cancellation; (viii) all other agreements and instruments necessary or advisable to consummate the acquisition or Disposition of any Investment; and (ix) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Fund.
2. The foregoing power of attorney:
   * + 1. is coupled with an interest, shall be irrevocable and shall survive and shall not be affected by the subsequent death, disability or Incapacity of any Member or any subsequent power of attorney executed by a Member;
       2. may be exercised by the Attorney, either by signing separately as attorney- in-fact for each Member or by a single signature of the Attorney, acting as attorney-in-fact for all of them;
       3. shall survive the delivery of an assignment by a Member of the whole or any fraction of its Interest; except that, where the assignee of the whole of such Membership Interest has been approved by the Manager for admission to the Fund, as a Substituted Member, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the Attorney to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution; and
       4. is in addition to any power of attorney that may be delivered by a Member in accordance with its Subscription Agreement entered into in connection with its acquisition of Interests.
3. Each Member shall execute and deliver to the Manager within five (5) days after receipt of the Manager’s request therefor such further designations, powers- of-attorney and other instruments as the Manager reasonably deems necessary to carry out the terms of this Agreement.

# ARTICLE XII

**RECORDS AND ACCOUNTING; REPORTS; FISCAL AFFAIRS**

1. Records and Accounting.
   * 1. Proper and complete records and books of account of the Fund, including a list of the names, addresses and Interests of all Members, shall be maintained at the Fund’s principal place of business. Each Member and its duly authorized representatives shall be permitted for any purpose reasonably related to a Membership Interest as a Member of the Fund to inspect such books and records of the Fund that are not legally required to be kept confidential at any reasonable time during normal business hours.
     2. The books and records of the Fund shall be kept at the Fund's principal place of business and/or at such other place as the Manager(s) shall designate. The books of the Fund shall be kept in accordance with the method of accounting determined by the Manager. Each Member shall have the right at all reasonable times (during usual business hours on Business Days), and upon five (5) Business Days advance Notice, to examine the books and records of the Fund. Each Member shall bear all expenses incurred in any examination made by such Member.
2. Reports. Within thirty (30) days after the end of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial statements of any Person in which the Fund holds Investments), the Manager shall cause to be delivered to each Person who was a Member at any time during the Fiscal Year, the following information:
3. tax information necessary for the completion of the Member’s U.S. federal, state, and local income tax returns;
4. profit and loss statement, income statement, balance sheet statement; and
5. such other reports as the Manager determines to provide in its sole discretion.

For each Fiscal Quarter the Manager provides the statements listed in 12.2 (b) to each person who was a Member at any time during the Fiscal Quarter.

1. Valuation of Assets Owned by the Fund. For purposes of this Article XII, all assets of the Fund shall be valued in accordance with generally accepted accounting principles. For all purposes of this Agreement (including, without limitation, any provisions requiring a valuation of the assets of the Fund at their Fair Market Value), no value shall ever be attributed to the firm name of the Fund, or the right of its use, or to the goodwill appertaining to the Fund or its business, either during the continuation of the Fund or in the event of its dissolution and termination. Liabilities shall be determined in accordance with the method of accounting employed by the Fund and may include reserves for estimated accrued expenses and reserves for unknown or unfixed liabilities or contingencies. Subject to the specific standards set forth below, the valuation of assets and liabilities under this Agreement shall be at Fair Market Value, as determined in good faith by the Manager or an independent contractor appointed by the Manager in accordance with this paragraph and given the proper due diligence (including the use of external investment research statements).
2. Tax Information. The Manager shall cause to be delivered to each Person who was a Member at any time during a Fiscal Year a Form K-1 and such other information, if any, with respect to the Fund as may be necessary for the preparation of such Member’s federal income tax returns, including a statement showing such Member’s share of income, gain or loss, expense and credits for such Fiscal Year for federal income tax purposes.
3. Elections. The determinations of the Manager with respect to the treatment of any item or its allocation for federal, state or local tax purposes shall be binding upon all of the Members so long as such determination shall not be inconsistent with any express term hereof. The Manager and each Member (in their respective capacities as such) agree that such Members shall not undertake any action, including (without limitation) filing of any elections or making regular bid or offer quotes to buy or sell interests or derivative interests in the Fund, that will cause the Fund to be, or create a substantial risk that the Fund will be, (i) classified as other than a partnership for United States federal income tax purposes, or (ii) treated as a “publicly traded company” within the meaning of Sections 469 or 7704 of the Code.
4. Fiscal Year. The fiscal year of the Fund shall be the calendar year. Fiscal Quarter shall be the calendar quarter.
5. Tax Matters Partner. The Manager shall be the initial Tax Matters Partner of the Fund for the Fund for the purposes of Code Section 6231.

# ARTICLE XIII

# MISCELLANEOUS

* 1. Notices.
     1. Any notice to any Member shall be at the address of such Member set forth on the Schedule A to this Agreement, or such other mailing address of which such Member shall advise the Manager in writing. Any notice to the Fund or the Manager shall be at the principal office of the Fund.
     2. Any notice shall be deemed to have been duly given if (i) personally delivered, when received, (ii) sent by an internationally recognized overnight courier, on the second following business day, or (iii) sent by electronic mail, upon confirmation of delivery to the intended recipient.
  2. Severability of Provisions. If any provision of this Agreement shall be held to be invalid, the remainder of this Agreement shall not be affected thereby.
  3. Side Letters. Notwithstanding any provisions of this Agreement to the contrary, it is hereby acknowledged and agreed that the Fund, and the Manager on its own behalf or on behalf of the Fund, may enter into a confidential side letter or similar agreement (each, a **“Side Letter”**) with, or deliver a Side Letter to, an existing or prospective Member who becomes a Member (a **“Side Letter Member”**) which has the effect of establishing rights under, or altering or supplementing the terms of, this Agreement between such Side Letter Member and the Fund. The parties hereto agree that any terms contained in a Side Letter shall govern with respect to such Side Letter Member notwithstanding the provisions of this Agreement.
  4. Entire Agreement. This Agreement, the Subscription Agreement, and any Side Letter executed with the Fund by any Member, together constitute the entire agreement among the parties with respect to the subject matter hereof; it supersedes any prior agreement or understandings among them, oral or written with respect to the subject matter hereof, all of which are hereby canceled. There are no representations, agreements, arrangements or understandings, oral or written, between or among the Members relating only to the subject matter of such agreements that are not fully expressed herein or therein. The provisions of this Agreement and such agreements, to the extent that they restrict the duties and liabilities of the Manager otherwise existing at law or in equity, are agreed by the Members to modify to that extent such duties and liabilities of the Manager. This Agreement may not be modified or amended other than pursuant to Article IX. Notwithstanding the foregoing, this Agreement is deemed to include the Subscription Agreement and any Side Letters (which may modify the terms of this Agreement with respect to the Members party thereto); provided, however, that the Members agree that notwithstanding paragraph 9.1 hereof, each such other agreement may be amended, modified, waived or terminated by the Fund and the Members who are parties thereto without the consent of any other Members, and any Member not a party to any such other agreement is not intended to be a third-party beneficiary of any such other agreement.
  5. Headings. The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine or the neuter gender shall include the masculine, the feminine and the neuter.
  6. Binding Provisions. Subject to Articles VI and VII, the covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal or legal representatives, successors and assigns of the respective parties hereto.
  7. No Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.
  8. Reproduction of Documents. This Agreement and all documents relating thereto, including, without limitation, consents, waivers, amendments and modifications which may hereafter be executed, and certificates and other information previously or hereafter furnished to any Member, may be reproduced by it by any digital, photographic, photostatic, or other similar process, and any Member may destroy any original document so reproduced. The Fund, the Manager and each Member agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).
  9. Confidentiality. During the term of this Agreement and three years after its expiration or termination for any reason, each Member will maintain the confidentiality of information that is, to the knowledge of such Member, non-public information regarding the Fund (including information regarding any Person in which the Fund holds, or contemplates acquiring, any Investments) and/or the Manager received by such Member pursuant to this Agreement, except as otherwise required by law or as otherwise consented to in writing by the Fund. Notwithstanding anything to the contrary, the parties hereto may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure hereof and all materials of any kind (including opinions or other tax analyses) that are provided to any party relating to the tax treatment and tax structure hereof.
  10. No Right to Partition. To the extent permitted by law, and except as otherwise expressly provided in this Agreement, the Members, on behalf of themselves and their shareholders, partners, heirs, executors, administrators, personal or legal representatives, successors and assigns, if any, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, to seek, bring or maintain any action in any court of law or equity for partition of the Fund or any asset of the Fund, or any interest that is considered to be Fund property, regardless of the manner in which title to any such property may be held.
  11. No Recourse. Each Party acknowledges that it will look solely to each other relevant Party for the performance of its respective covenants, agreements and obligations under this Agreement, not to any other Person, and that it shall have no recourse to any Affiliate of any Party in connection therewith.
  12. Right of Offset. Whenever the Fund is to pay any sum to any Member, any amounts that such Member owes to the Fund which are not the subject of a good faith dispute may be deducted from that sum before payment.
  13. Remedies. Each of the parties to this Agreement will be entitled to enforce its rights under this Agreement specifically, to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that money damages alone may not be an adequate remedy for any breach of the provisions of this Agreement and that any party shall be entitled to seek immediate injunctive relief or specific performance without bond or the necessity of showing actual monetary damages in order to enforce or prevent any violations of the provisions of this Agreement. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party will not preclude or waive such party’s right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
  14. Damages Waiver. Notwithstanding any provision herein to the contrary, no Person shall be liable hereunder for punitive, indirect, consequential or exemplary losses or damages of any nature, including, but not limited to, diminution in value of investments, loss of tax benefits, damages for lost profits or revenues or the loss or use of such profits or anticipated revenues, cost of capital, loss of goodwill, penalties, damages to reputation or damages for lost opportunities, or any other special or incidental damages, regardless of whether said claim is based upon contract, warranty, tort (including negligence and strict liability) or other theory of law.
  15. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
  16. Timing. All dates and times specified in this Agreement are of the essence and shall be strictly enforced. In the event that the last day for the exercise of any right or the discharge of any duty under this Agreement would otherwise be a day that is not a business day, the period for exercising such right or discharging such duty shall be extended until the Close of Business on the next succeeding business day.
  17. Survival. The rights and obligations of the Parties which by their nature should survive, shall survive any dissolution of the Fund.
  18. Governing Law. This Agreement, any and all actions, disputes, controversies or claims (whether at law or in equity, whether in contract or tort, statute or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by, construed and enforced in accordance with the law of the State of Delaware, without regard to the choice of law or conflicts of law principles thereof. The parties hereto expressly waive any right they may have, now or in the future, to demand or seek the application of a governing law other than the law of the State of Delaware.
  19. Internal Dispute Resolution Procedure.
      1. Because the nature of the Fund is to generate Profits on behalf of its Members, it is imperative that one Member’s dispute with the Manager and/or other Members is not allowed to diminish the Profits available to other Members or resources necessary to operate the Fund. Litigation could require diversion of the Fund’s Profits to pay attorney’s fees or could tie up funds necessary for operation of the Fund, impacting the profitability of the investment for all Members. The only way to prevent such needless expense is to have a comprehensive Internal Dispute Resolution Procedure (Procedure) in place, to which each of the Members have specifically agreed in advance of membership in the Fund. The Procedure described below requires an aggrieved party to take a series of steps designed to amicably resolve a dispute on terms that will preserve the interests of the Fund and the other non-disputing Members.
      2. In the event of a dispute, claim, question, or disagreement between the Members or between the Manager and one or more Members arising from or relating to this Agreement, the breach thereof, or any associated transaction, or to interpret or enforce any rights or duties under the Act (hereinafter **“Dispute”**), the Manager and Members hereby agree to resolve such Dispute by strictly adhering to the Procedure provided below. The following Procedure has been adapted for purposes of this Agreement from guidelines and rules published by the American Arbitration Association (**“AAA”**):
         1. Notice of Disputes. Written notice of a Dispute must be sent to the Manager or Member by the aggrieved party as described in the notice requirements of paragraph 13.1.
         2. Negotiation of Dispute. The parties hereto shall use their best efforts to settle any Dispute through negotiation before resorting to any other means of resolution. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties. If, within a period of sixty (60) days after written notice of such Dispute has been served by either party on the other, the parties have not reached a negotiated solution, then upon further notice by either party, the Dispute shall be submitted to mediation administered by the AAA in accordance with the provisions of its Commercial Arbitration Rules and Mediation Procedures. The onus is on the complaining party to initiate each next step in this Procedure as provided below.
         3. Mandatory Alternative Dispute Resolution. On failure of negotiation provided above; mediation, shall be used to settle the Dispute. On unanimous consent of all parties to a Dispute, the disputing party may initiate a claims action or litigation in lieu of mandatory mediation. In any claims action or litigation, the local rules of court shall apply in lieu of the remaining provisions of this paragraph 13.19.
         4. Consolidation. Identical or sufficiently similar Disputes presented by more than one Member may, at the option of the Manager, be consolidated into a single Procedure.
  20. Mediation.
      1. Any Dispute that cannot be settled through negotiation as described in paragraph 13.19, may proceed to mediation. The parties shall try in good faith to settle the Dispute by mediation, which each of the parties to the Dispute must attend in person, before resorting to the court as set forth in paragraph 13.21.
      2. AAA Commercial Arbitration Rules and Mediation Procedures. Any Dispute submitted for mediation shall be subject to the AAA’s Commercial Arbitration Rules and Mediation Procedures (**“Rules”**). If there is a conflict between the Rules and this paragraph, the paragraph shall be controlling.
      3. Location of Mediation. Any mediation shall be conducted in State of Delaware and each party to such mediation or arbitration must attend in person.
      4. Selection of Mediator. The complaining party shall submit a Request for Mediation to the AAA. The AAA will appoint a qualified mediator to serve on the case. The preferred mediator shall have specialized knowledge of securities law, unless the Dispute pertains to financial accounting issues, in which case the arbitrator shall be a CPA, or if no such person is available, shall be generally familiar with the subject matter involved in the Dispute. If the parties are unable to agree on the mediator within thirty (30) days of the Request for Mediation, the AAA case manager will make an appointment. If the initial mediation(s) does not completely resolve the Dispute, any party may request a different mediator for subsequent mediation(s) by serving notice of the request to the other party(ies) for approval, and subject to qualification per the requirements stated above.
      5. Attorney’s Fees and Costs. Each party shall bear its own costs and expenses (including their own attorney’s fees) and an equal share of the mediator’ fees and any administrative fees, regardless of the outcome; however, if the Manager is a party, its legal fees shall be paid by the Fund.
      6. The maximum amount a party may seek during mediation is the amount equal to the party’s unreturned Capital Contributions and any Distributions to which the party may be entitled.
      7. If, after no less than three (3) face-to-face mediation sessions, mediation proves unsuccessful at resolving the Dispute, the parties may then, and only then, the Parties may submit the Dispute to the competent court as described in paragraph 13.20.
  21. Venue. The parties agree that any action brought by any party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the Court of Chancery of the State of Delaware or, if such court shall not have jurisdiction, any federal court of the United States of America sitting in Delaware. **Each party hereto acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore it hereby irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of or relating to this Agreement and any of the transactions contemplated hereby. Each party hereto certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce either of such waivers, (ii) it understands and has considered the implications of such waivers.**
  22. No Partnership Intended for Non-Tax Purposes. The Members hereby recognize that the Fund will be a partnership for United States Federal income tax purposes, and that the Fund will be subject to all of the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, that the Manager may at its sole discretion cause the Fund to make an election under Internal Revenue Code Section 761(a) and Internal Revenue Regulation Section 1.761-2 to exclude the Fund from the application of Subchapter K. One effect of such an election, if made, is that Members will not receive a Schedule K-1 with respect to their Membership in the Fund. However, the Members expressly do not intend hereby to form a partnership under either the Delaware Revised Limited Partnership Act or the Act, and neither anything contained herein nor the filing of United States Partnership Returns of Income by the Fund shall be deemed or construed to alter the nature of the Fund or to expand the obligations or liabilities of the Members. Without intention to limit the generality of the foregoing in any respect, the Members do not intend to be partners one to another, or partners as to any third party. To the extent that any Member, by word or action, represents to another Person that any other Member is a partner or that the Fund is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.
  23. Creditors. None of the provisions of this Agreement shall be for the benefit of or enforced by any creditor of the Fund or any Member or its Affiliates.
  24. Informed Decision; Advice of Counsel. Each party hereto hereby acknowledges and agrees that (a) this Agreement, including all Schedules and Exhibits hereto, have been or will be executed and delivered, as appropriate, following arm’s length negotiations between and among the parties; and (b) such party’s informed decision to execute, deliver and perform this Agreement (i) was made on the basis of legal, tax, financial and other advice from professionals acting on behalf of such party or on the basis of such party having had the opportunity to engage legal, tax, financial and other advice from professionals, acting on behalf of such party, (ii) was voluntary, and (iii) was not based on any representations, warranties, covenants and/or agreements of any party or other Person not expressly provided for in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed, or caused this Operating Agreement of ARCTIC EQUITY II LLC to be executed, as of the date set forth hereinabove.

ARCTIC EQUITY II LLC

By: ARCTIC CAPITAL LLC, its Manager

*ALVI FINANCIAL GROUP LLC, manager of ARCTIC CAPITAL LLC*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: DMITRY VORONTSOV

Title: Manager

**Bank details**:

Beneficiary: Arctic Equity II LLC

Bank name: JP Morgan Chase

Bank account: 818976729

ACH routing number: 021000021

Wire routing number: 021000021

SWIFT: CHASUS33

Manager: Dmitry Vorontsov (on behalf of Arctic Capital LLC)

Address: 555 MADISON AVE FL 5 NEW YORK, NY 10022

The Members have signed this Agreement by their signature on their respective Subscription Agreements by which they acquired their Membership Interests, copies of which shall be affixed to this Agreement.

Signature: \_\_\_\_\_\_\_\_\_\_\_

Name: John Smit

Title: Member (Investor)

Date: 01.01.0001

# Schedule A

**REGISTER OF MEMBERS**

|  |  |  |
| --- | --- | --- |
| Name | Address | Capital Contribution |
| JOHN SMIT  Foreign passport of citizen of RUSSIA:10 1010101  Passport of citizen of RUSSIA: 4500 000001 | 100001, Russia, Moscow, Yaroslavskoe shosse, 0, bldg. 0, apartment 00 | XXX,XXX $US |