

# Model L<sup>3</sup>C Articles of Organization - Vermont Compliant

## Model L<sup>3</sup>C Operating Agreement - Vermont Compliant

Since I created the L<sup>3</sup>C there has been a consistent demand for model operating agreements and articles of incorporation. We have posted several over the years on the Americans for Community Development website but soon realized that they were all still based on the LLC roots which form the basis for the L<sup>3</sup>C. As such they lacked enough emphasis on the elements that make the L<sup>3</sup>C unique, so a group of lawyers, accountants, academics and others organized themselves into a working group organized by Elizabeth Carrott Minnigh to attempt to write the “perfect” model agreement. Although we all recognize it is not perfect, it is a great effort and one upon which I am sure further revisions will be added to make it even better. If you have suggestions for improvements be sure to send them to Elizabeth at [elizabeth.minnigh@bipc.com](mailto:elizabeth.minnigh@bipc.com) or me at [robert.lang@americansforcommunitydevelopment.org](mailto:robert.lang@americansforcommunitydevelopment.org)

These documents should not be considered a fill in the blanks type of form but rather a guide to what is needed. As the L<sup>3</sup>C is a state organized entity there are differences in the state laws under which an L<sup>3</sup>C will be organized. The documents are designed to fully comply with Vermont law. In most cases they will work within the laws of other states but to be sure an attorney conversant in state law should be retained to insure total compliance.

We profoundly thank the following individuals who contributed to the preparation of this document: **Cass Brewer, Allen Bromberger, Michael Burak, Steven Chiodini, Sanders Davies, Ed Hwang, Marc Lane, Stephen Loyd, Elizabeth Minnigh, Brian Murphy, Dana Brakman Reiser, Richard Schmalbeck, John Tyler, Robert Wexler, and Arthur Wood. Cass Brewer was the principal draftsman and reporter.**

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ARTICLES OF ORGANIZATION  
OF  
[NAME OF COMPANY], L3C  
A VERMONT<sup>1</sup> LOW-PROFIT LIMITED LIABILITY COMPANY (L3C)

1. NAME. The name of the low-profit limited liability company is:  
[NAME OF L3C], L3C (hereinafter the “Company”).
2. DESIGNATED OFFICE.<sup>2</sup> The address of the Company’s initial designated office is:  
[Street Address of Office]  
[City, State, Zip Code of Office]
3. REGISTERED AGENT. The name, street address, and county of the Company’s initial registered agent is:  
[Name of Registered Agent]  
[Street Address of Registered Agent]  
[City, State, Zip Code of Registered Agent]  
[County of Registered Agent]
4. MANAGEMENT. The Company shall be managed by one or more managers.<sup>3</sup>
5. PURPOSE.<sup>4</sup> The purpose of the Company is to engage in the following activities:

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<sup>1</sup> These model Articles have been drafted to comply with Vermont law.

<sup>2</sup> The Vermont L3C statute requires that the Articles set forth the address of the “initial designated office.” Other states may require the Articles to set forth a “principal office.”

<sup>3</sup> These model Articles assume a manager-managed LLC. One might consider including here, or in another section, the right of private foundation members of the L3C to appoint a manager to represent their interests. Typically, however, such a right is relegated to the Operating Agreement.

<sup>4</sup> Although it may be permissible under some states’ L3C statutes to provide a very generic statement of purpose in an L3C’s Articles—e.g., “a charitable or educational purpose within the meaning of I.R.C. § 170(c)(2)(B)”--the authors do not recommend such an approach. Instead, the authors recommend that the charitable or educational purpose of the L3C be stated with reasonable precision in the Articles (and in the Operating Agreement). For example: “The primary purposes of the Company are: (a) to enhance social welfare, support community improvement, eliminate prejudice and discrimination, and promote economic self-sufficiency by serving, or providing investment capital for, low-income communities or low-income persons through making investments in portfolio companies, including providing technical assistance and training, that meet the criteria for “program related investments” as defined in Section 4944(c) of the Code and the regulations promulgated thereunder. In

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[Generally and briefly describe Company purpose(s)]

6. L3C REQUIREMENTS. Notwithstanding anything to the contrary in Article 5 above or elsewhere in these Articles of Organization, the Company shall at all times be organized and operated in a manner that satisfies the requirements of Section 3005(a)<sup>5</sup> of the Vermont Limited Liability Company Act (the “Act”), including but not limited to the following requirements:
- a. The Company will significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended (the “Code”).<sup>6</sup>
  - b. The Company would not have been formed but for the relationship between the Company and the accomplishment of the purposes set forth in Article 5 above, consistent with the restrictions contained in this Article 6.<sup>7</sup>
  - c. No significant purpose of the Company is the production of income or the appreciation of property,<sup>8</sup> provided, however, that the fact that the Company produces significant income

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furtherance of these purposes, to the extent consistent with the foregoing, the Company may engage in (1) any other business or activity that now or hereafter may be necessary, incidental, proper, advisable, or convenient to accomplish the foregoing purposes (including obtaining financing), and (2) any other lawful activity permitted to be undertaken by a low-profit limited liability company under the [State Limited Liability Company Act (the “Act”)] that is consistent with the foregoing purposes.” This approach is recommended to prohibit an L3C from varying from its essential purpose without the consent of its members, especially private foundations that have a very specific charitable or educational mission.

<sup>5</sup> This reference as well as other statutory references would need to be modified for other states. In Vermont, the appropriate reference is to 11 V.S.A. § 3005(a).

<sup>6</sup> This provision is derived from the Vermont L3C statute, 11 V.S.A. § 3001(27)(A)(i), which requires that the company “significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal revenue Code of 1986 (IRC § 170(c)(2)(B).” This language is in turn derived from the PRI exception (Treas. Reg. § 53.4944-3(a)(1)(i)), which reads: “The primary purpose of the investment is to accomplish one or more of the purposes described in section 170(c)(2)(B).”

<sup>7</sup> This provision is derived from the Vermont L3C statute, 11 V.S.A. § 3001(27)(A)(ii), which requires the company “would not have been formed but for the company’s relationship to the accomplishment of charitable or educational purposes.”

<sup>8</sup> This provision is derived from the Vermont L3C statute, 11 V.S.A. § 3001(27)(B), which states, “No significant purpose of the company is the production of income or the appreciation of property; provided, however, that the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property” (emphasis added). This language is in turn derived from the PRI exception (Treas. Reg. § 53.4944-3(a)(1)(ii)), which reads: “No significant purpose of the investment is the production of income or the appreciation of property,” and from IRC § 4944(c), which reads: “Exception for program-related investments. For purposes of this section,

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or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.<sup>9</sup>

- d. The Company will not engage in any political or legislative activities within the meaning of Section 170(c)(2)(D) of the Code.
- e. The Company will not carry on propaganda, or otherwise attempt to influence legislation, within the meaning of Section 4945(d)(1) of the Code.
- f. If the Company at any time ceases to qualify under Section 3001(27) of the Act or ceases to satisfy any of the foregoing requirements of this Article 6 (hereinafter an “LLC Conversion Event”), then the Company immediately shall cease to be a low-profit limited liability company, but by continuing to meet all the other requirements of the Act, the Company will continue to exist as a limited liability company; provided further, however, that notwithstanding anything to the contrary in Article 7 below, [ALTERNATIVE: subject to Article 6(g) below,] upon the occurrence of an LLC Conversion Event, the manager or managers shall be authorized to amend these Articles of Organization to change the name of the Company to conform to the requirements of Section 3005 of the Act and to eliminate this Article 6.<sup>10</sup>
- g. [OPTIONAL:<sup>11</sup> The manager or managers have a duty to notify all of the members of the Company in writing immediately upon determining either (i) that an LLC Conversion

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investments, the primary purpose of which is to accomplish one or more of the purposes described in section [IRC Sec.] 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investments which jeopardize the carrying out of exempt purposes.”

<sup>9</sup> This provision continues by clarifying the “no significant purpose” as written in the regulation from Treas. Reg. § 53.4944-3(a)(2)(iii), which reads: “In determining whether a significant purpose of an investment is the production of income or the appreciation of property, it shall be relevant whether investors solely engaged in the investment for profit would be likely to make the investment on the same terms as the private foundation. However, the fact that an investment produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.”

<sup>10</sup> This provision is derived from 11 V.S.A. § 3001(27)(D), which reads: “If a company that met the definition of this subdivision (27) at its formation at any time ceases to satisfy any one of the requirements, it shall immediately cease to be a low-profit limited liability company, but by continuing to meet all the other requirements of this chapter, will continue to exist as a limited liability company. The name of the company must be changed to be in conformance with subsection 3005(a) of this title.”

<sup>11</sup> The authors recommend that this paragraph 6(b) [or preferably even more thorough protective language] be included in the section of the Company’s written Operating Agreement that pertains to the rights of members of the L3C. Private foundation members, in particular, should be apprised of any circumstance that either may or has resulted in an LLC Conversion Event so that they may take appropriate action to either liquidate their investment

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Event is reasonably foreseeable or (ii) that an LLC Conversion Event has occurred. Furthermore, upon such determination, the manager or managers shall, in accordance with the Company's written operating agreement (if any) or the Act (if the Company has no written operating agreement or applicable provision thereof), as soon as practical call a special meeting of the members of the Company. At such special meeting, the members shall determine, in accordance with the Company's written operating agreement (if any) or the Act (if the Company has no written operating agreement or applicable provision thereof), whether (i) to continue the Company's existence as a limited liability company; (ii) to liquidate and dissolve the Company in accordance with the Company's written operating agreement or applicable provision thereof (if any) or the Act (if the Company has no written operating agreement or applicable provision thereof); or (iii) to take such other and further action as the members shall determine.]

h. [OPTIONAL: Language requiring the Company to register under applicable charitable trust provisions, if any. Illinois requires L3Cs to so register and thus subjects L3Cs to the supervision of the Illinois Attorney General. See 805 ILCS 180/1-26(d).]<sup>12</sup>

7. **TERM.** The Company is not an "at-will" company but is a "term" company within the meaning of Section 3023 of the Act. The Company's term shall be perpetual unless and until the Company is dissolved in accordance with the Company's written operating agreement or nonwaivable provisions of the Act.<sup>13</sup>

8. **MEMBER LIABILITY.** The members and managers of the Company shall not be liable for the debts, obligations, and liabilities of the Company, although pursuant to express provisions of the Company's written operating agreement the members or their assignees may be required to make certain capital contributions to the Company.<sup>14</sup>

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or declassify it as a PRI. The LLC Conversion Event language is included here as a failsafe provision and should be omitted if substantially similar language is contained in a written Operating Agreement.

<sup>12</sup> Most states do not require L3Cs to register with that state's Attorney General. If the Company voluntarily desires to incorporate a provision into its Articles in order to permit supervision by the Attorney General, consider inserting such language here. Note, however, that any such language is purely optional, even in Illinois where registration is required, and that local law may not authorize the Attorney General to exercise supervisory rights over an L3C even if they are voluntarily granted in the Company's Articles or Operating Agreement.

<sup>13</sup> The Vermont LLC Act differentiates between "at-will" and "term" limited liability companies. In general, "at-will" limited liability companies provide members with greater rights to withdraw or otherwise dissociate from the company (similar to a general partnership). Accordingly, these form Articles elect for the Company to be a perpetual "term" limited liability company within the meaning of the Act which, in general, allows the provisions of the Operating Agreement to control the events of dissociation of a member. Because, however, Vermont law is unusual in this respect, competent counsel should be consulted to determine whether a perpetual term or some shorter period (e.g., fifty years) should be designated as the "term" of the Company.

<sup>14</sup> Again, the Vermont LLC Act is somewhat unusual in that it requires the Articles to set forth whether the members of a limited liability company can be held liable for the debts, obligations, and liabilities of the company.

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9. [OPTIONAL: AMENDMENT. These Articles of Organization may not be amended or modified without the unanimous vote or consent of the members of the Company.<sup>15</sup> [OR: “without the vote or consent of the \_\_\_\_\_ Foundation.”]]

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Name of Organizer/ Attorney for Organizer

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See 11 VSA §§ 3023 and 3043. As permitted by the Vermont LLC Act, these Articles expressly disavow any such liability.

<sup>15</sup> This provision is optional and would ensure minority owners (such as a private foundation) that the Company’s Articles cannot be amended without unanimous consent.

OPERATING AGREEMENT  
OF  
[NAME], L3C  
*a Vermont low-profit limited liability company*

[Note: This Agreement has been drafted to comply with Vermont law relevant to L3Cs and LLCs and may need to be modified to comply with the laws of other jurisdictions.]

Dated as of [Date]

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**THE COMPANY INTERESTS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH INTERESTS MAY NOT BE SOLD, TRANSFERRED, PLEDGED, OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH IN THIS AGREEMENT.**

[Note: Depending on the number and sophistication of the investors securities registration may be necessary. In particular, the Company may need to register under the Investment Company Act of 1940 and failure to do so could have severe adverse consequences for the Company. Competent legal counsel must be consulted with respect to these matters.]

[Note: Although not required, it may be advisable to include a preamble section before the substantive text of the operating agreement stating the concept underlying your L3C and providing a brief explanation of your expectations with respect to the operation of your L3C. In a preamble, generally each statement begins with "WHEREAS" and the preamble is concluded with a statement such as: "NOW, THEREFORE, in consideration of the above Preamble, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:"]

## **AGREEMENT**

This LIMITED LIABILITY COMPANY OPERATING AGREEMENT of [NAME] (the "Company") is made and entered into effective as of [Date] (as it may be amended from time to time in accordance with its terms, the "Agreement"), by and among its "Class A Members" and "Class PF Members" (as defined below and collectively referred to herein as the "Members").

### **ARTICLE 1** **FORMATION; QUALIFICATION; DEFINITIONS**

Section 1.1 Formation. The Company shall constitute an L3C formed pursuant to Chapter 21: Limited Liability Companies, of Title 11: Corporations, Partnerships and Associations of the Vermont Statutes Annotated (the "LLC Act"). The Articles of Organization for the Company were filed on behalf of the Company with the Secretary of State of the State of Vermont on [Date].

Section 1.2 Qualification to do Business. The Manager shall cause the Company to qualify to do business, or to register under an assumed or fictitious name, in any jurisdiction in which the Company transacts business in which such qualification or registration is necessary or desirable.

Section 1.3 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings set forth on Exhibit 1.

### **ARTICLE 2** **NAME; BUSINESS; TERM**

Section 2.1 Name. The name of the Company is "[NAME]." Business shall be conducted by the Company under that name or such other name or names as its Members may from time to time approve.

Section 2.2 Purposes of the Company.<sup>1</sup> The proposed purposes of the Company are as follows:

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<sup>1</sup> Although it may be permissible under some states' L3C statutes to provide a very generic statement of purpose in an L3C's Articles—e.g., "a charitable or educational purpose within the meaning of I.R.C. § 170(c)(2)(B)"--the authors do not recommend such an approach. Instead, the authors recommend that the charitable or educational purpose of the L3C be stated with reasonable precision in the Articles (and in the Operating Agreement). For example: "The primary purposes of the Company are: (a) to enhance social welfare, support community

- (a) To [\_\_\_\_\_];
- (b) To [\_\_\_\_\_]; and
- (c) To engage in any lawful activities necessary or advisable in connection with the foregoing purposes that are not inconsistent with the LLC Act or Section 2.3 of this Agreement.

Section 2.3 Business to Operate as an L3C. Notwithstanding anything to the contrary in Section 2.2, the Company shall at all times be organized for one or more business purposes that satisfies, and is at all times operated to satisfy, each of the following requirements applicable to low-profit limited liability companies as defined in the Act:

(a) The Company's purposes significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Code.

(b) The Company would not have been formed but for the Company's desire to accomplish its purposes as set forth in Section 2.2.

(c) No significant purpose of the Company is the production of income or the appreciation of property; provided, however, that the fact that the Company produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(d) The Company will not participate or intervene in (including the publishing or distributing of statements on political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of Section 170(c)(2)(D) of the Code) or otherwise influence the outcome of any specific public election, or carry on, directly or indirectly, a voter registration drive (within the meaning of Section 4945(d)(2) of the Code).

(e) The Company will not carry on propaganda, or otherwise attempt to influence legislation (within the meaning of Section 4945(d)(1) of the Code).

Section 2.4 Term. The Members acknowledge and agree that the Company is not an "at-will" company (within the meaning of the LLC Act), that the term of the Company shall be perpetual, and that the Company shall continue indefinitely until dissolved pursuant to this Agreement. Accordingly, except as otherwise mandated pursuant to Section 3101(4) or (5) or other nonwaivable provisions of the LLC Act, neither the Bankruptcy of a Member, nor the separation of a Member, whether by reason of death,

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improvement, eliminate prejudice and discrimination, and promote economic self-sufficiency by serving, or providing investment capital for, low-income communities or low-income persons through making investments in portfolio companies, including providing technical assistance and training, that meet the criteria for "program related investments" as defined in Section 4944(c) of the Code and the regulations promulgated thereunder. In furtherance of these purposes, to the extent consistent with the foregoing, the Company may engage in (1) any other business or activity that now or hereafter may be necessary, incidental, proper, advisable, or convenient to accomplish the foregoing purposes (including obtaining financing), and (2) any other lawful activity permitted to be undertaken by a low-profit limited liability company under the [State Limited Liability Company Act (the "Act")] that is consistent with the foregoing purposes." This approach is recommended to prohibit an L3C from varying from its essential purpose without the consent of its members, especially private foundations that have a very specific charitable or educational mission.

disability, expulsion, withdrawal, or retirement (or any other event specified in Section 3081 of the LLC Act as an event of dissociation), shall terminate or dissolve the Company.

Section 2.5 Principal Office. The Company's designated principal office shall be located at [address]. The Manager may change the designated principal office of the Company. The Company may have such other offices, either within or without the State of Vermont as the Manager designates or as the business of the Company requires.

Section 2.6 Registered Agent; Registered Office. The registered agent for the service of process shall be [registered agent] The registered office shall be [registered agent], [address]. The registered agent and registered office may be changed from time to time by the Manager and by the filing of the prescribed forms with, and the payment of any prescribed fees to, the Secretary of State of the State of Vermont.

Section 2.7 Fiscal Year. Unless otherwise determined by the Managers, the Company's Fiscal Year shall be the calendar year (or portion thereof ending December 31 during the Company's first Fiscal Year.

### **ARTICLE 3** **MEMBERS; MEMBERSHIP**

Section 3.1 Membership Classes. The Company shall have the following two classes of Members:

- (a) "Class A Members," which shall be composed of all Members other than Class PF Members; and
- (b) "Class PF Members," which shall be composed solely of PF Members making a "PRI" in the Company.

[Note: This Agreement only contemplates two classes of members, depending on the identify of the investors additional classes may be advisable.]

Section 3.2 Membership Interests. Each Member shall own a Membership Interest in the Company, which may be expressed as a percentage, as shall be set forth on the Company Schedule hereto.

Section 3.3 Company Schedule. The name, address, Membership Interest, Initial Capital Contribution, and Capital Account of each Member shall be set forth on Schedule A attached hereto (the "Company Schedule"). The Manager shall update the Company Schedule from time to time as it deems necessary to reflect accurately the information to be contained therein. Any reference in this Agreement to the Company Schedule shall be a reference to the Company Schedule as amended and in effect from time to time and maintained in accordance with this Agreement.

Section 3.4 New Members. The Manager may admit additional Members (a "New Member") of any class to the Company only upon [(i) the affirmative vote of Sixty-Six and Two-Thirds Percent (66-2/3%) of all of the Members voting together as if a single class, and the simultaneous vote or consent of all of the Class PF Members, and (ii)] the execution by the New Member of a joinder to this Agreement in the form of

Schedule B, which shall be counter-signed by each New Member and the Manager, on behalf of the Company. Unless otherwise determined by all of the Members acting unanimously, the Manager shall assign such New Member a Membership Interest in the Company in proportion to the amount of such New Member's Capital Contribution in relation to the then Book Value of the Company.

Section 3.5 List of Members. Upon written request of any Member, the Company shall provide a list showing the names, addresses and Membership Interests of all Members and the other information required by the Act.

## **ARTICLE 4**

### **CONTRIBUTIONS; CAPITAL ACCOUNTS**

Section 4.1 Contributions by Members. Within ten (10) days of the date of this Agreement, each Member shall make the Capital Contributions to the Company in the amount set forth on the Company Schedule ("Initial Capital Contributions").

Section 4.2 Additional Contributions. Except as set forth in Section 4.1, no Member is obligated to make any further Capital Contributions to the Company.

Section 4.3 No Interest on Contributions or Capital Account. No Member shall have the right to receive interest on Capital Contributions to the Company or on such Member's Capital Account.

Section 4.4 Loans. Any Person may, with the consent of the Manager, lend or advance money to the Company. If any Member shall make any loan or loans to the Company or advance money on his, her or its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution but shall be a debt due from the Company. The amount of any such loan or advance by a lending Member shall be repayable out of the Company's cash and shall bear interest at such rate as the Manager and the lending Member shall agree taking into consideration, without limitation, prevailing interest rates and the interest rates the lender is required to pay in the event such lender has himself, herself or itself borrowed funds to loan or advance to the Company and the terms and conditions of such loan, including the rate of interest, shall be no less favorable to the Company than if the lender had been an independent third party. None of the Members shall be obligated to make any loan or advance to the Company.

Section 4.5 Capital Accounts.

(a) The Company shall establish and maintain a separate "Capital Account" for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the discretion of the Manager), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulation Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

(b) For purposes of computing the amount of any item of Company income, gain, loss or deduction to be allocated pursuant to Article 5 and to be reflected in the Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination,

recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose), provided that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(1)(B), Code Section 705(a)(2)(B), and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for federal income tax purposes.

(ii) If the Book Value of any Company property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

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

(v) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

(vi) Items of income, gain, loss and deduction of the Company with respect to any property distributed to a Member shall be computed as if the Company had sold such property on the date of such distribution at a price equal to its Fair Market Value at that date.

(c) The Members' Capital Accounts normally will be adjusted in accordance with this Agreement on an annual or other periodic basis as determined by the Manager, but the Capital Accounts may be adjusted more often if a New Member is admitted to the Company or if circumstances otherwise make it advisable in the judgment of the Manager.

Section 4.6 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

Section 4.7 No Withdrawal. No Person shall be entitled to withdraw any part of such Person's Capital Contributions or Capital Account or to receive any Distribution from the Company, except as expressly provided in this Agreement or as required by Section 3081(1) or (5) of the LLC Act.

## **ARTICLE 5**

### **DISTRIBUTIONS AND ALLOCATIONS OF INCOME AND LOSS**

[Note: This operating agreement assumes that the L3C will be taxed as a partnership. Depending on the

elections of the L3C and the number of members, an L3C may be treated as a disregarded entity or an association taxable as a corporation for tax purposes. Legal and accounting professionals should be consulted to determine which form is the most appropriate. Much of Article 5 is written to be compliant with the federal tax code on the assumption that the L3C will be taxed as a partnership, and legal counsel should be consulted when making any modification.]

Section 5.1      Distributions.

(a)      Except as expressly provided otherwise in Articles 8 and 12 of this Agreement, the Company shall make Distributions to the Members in respect of their Membership Interests at any time and from time to time as determined by the Manager in the Manager's sole discretion; provided that such Distributions are permitted under any lending agreements to which the Company or any of its Subsidiaries is a party and under applicable law. Subject to the foregoing and Section 5.1(b), Distributions shall be made in the following order and priority: [Note: The priority of distributions is entirely subject to the negotiation of the parties and this section should be customized accordingly. The distribution priority set forth below is for illustration purposes only.]<sup>2</sup>

(i)      First, to the Class A Members in proportion to and to the extent of the Unreturned Capital with respect to each such Class A Member's Membership Interest held by each such Member immediately prior to such Distribution;

(ii)      Second, to the Class PF Members in proportion to and to the extent of the Unreturned Capital with respect to each such Class PF Member's Membership Interest held by each such Member immediately prior to such Distribution; and

(iii)      Third, to all Members ratably among such Members based upon their respective Membership Interests.

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<sup>2</sup> Competent tax advice should be sought to determine whether in any given circumstance distribution provisions such as these comply with the prohibition on private benefit, which is applicable to all IRC § 501(c)(3) organizations including private foundations. Otherwise, a private foundation investing in the L3C could jeopardize its exempt status. Impermissible private benefit arises from "non-incidental benefits conferred on disinterested persons [that] serve private interests." Determining whether a benefit flowing to private individuals precludes exempt status requires balancing. As the Service has stated:

Any private benefit arising from a particular activity must be "incidental" in both a qualitative and quantitative sense to the overall public benefit achieved by the activity if the organization is to remain exempt. To be qualitatively incidental, a private benefit must occur as a necessary concomitant of the activity that benefits the public at large; in other words, the benefit to the public cannot be achieved without necessarily benefiting private individuals. Such benefits might also be characterized as indirect or unintentional. To be quantitatively incidental, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity. It bears emphasis that, even though exemption of the entire organization may be at stake, the private benefit conferred by an activity or arrangement is balanced only against the public benefit conferred by that activity or arrangement, not the overall good accomplished by the organization.

See G.C.M. 39862 (Dec. 2, 1991).]

(b) Notwithstanding the priority of Distributions in Section 5.1(a), the Company will use reasonable efforts, consistent with any restrictions which may be imposed by any creditor of the Company or any of its Subsidiaries or applicable law, to make quarterly or more frequent Distributions of an amount of cash (a "Tax Distribution") equal to the product of (i) the Company Income Amount for such calendar quarter or other period, multiplied by (ii) the Assumed Tax Rate for such Fiscal Year. The "Company Income Amount" for a Fiscal Year shall be an amount, if positive, equal to the estimated net taxable income of the Company for such Fiscal Year based upon the Company's estimated taxable income through such date, minus any net taxable loss of the Company for any prior Fiscal Year not previously taken into account for purposes of this Section 5.1(b). The "Assumed Tax Rate" for a Fiscal Year shall be the maximum federal, foreign, state, and local income tax rate that would be applicable to a Member if such Member were taxed for such Fiscal Year (and the calendar quarters or other periods in such Fiscal Year) as a corporation or individual resident or domiciled in either the State of Vermont or the state where the Company is then domiciled (i.e., the highest of the rates, regardless of whether such Member is a corporation, an individual, or another entity and regardless of whether such Member is domiciled in Vermont or the state where the Company is then domiciled ) in respect of income recognized during each such Fiscal Year. The Company will use reasonable efforts to cause such Distributions to be made in a manner which permits such Members to use the proceeds of such Distributions to make on a timely basis all required estimated payments of income taxes in respect of the taxable income so allocated to them. The Company will use reasonable best efforts to have Tax Distributions be permitted distributions pursuant to any credit and/or lending agreement or similar document with any creditor of the Company.

(c) The Tax Distributions for each Fiscal Year shall be distributed to the Members in the same proportions that taxable income was or is anticipated to be allocated to the Members during such Fiscal Year. Each Distribution pursuant to this Section 5.1(c) shall be made to the Persons shown on the Company's books and records as a Member as of the date of such Distribution and shall be treated as an advance to such Persons of amounts to which they are otherwise entitled under Section 5.1(a). Each Distribution pursuant to this Section 5.1(c), to the extent attributable to Profits in excess of Losses (and Losses of any prior Fiscal Year not previously taken into account for purposes of this Section 5.1(c)) allocated to such Persons by virtue of Section 5.1(a), shall not be treated as an advance to such Persons of amounts to which they are otherwise entitled under Section 5.1(a) and, for the avoidance of doubt, shall not reduce the amount of any Distributions to such Persons pursuant to Section 5.1(a)(1).

(d) The Members shall look solely to the assets of the Company for any Distributions, whether liquidating Distributions or otherwise. If the assets of the Company remaining after the payment or discharge, or the provision for payment or discharge, of the debts, obligations, and other liabilities of the Company are insufficient to make any Distributions, no Member shall have any recourse against the separate assets of any other Member (except as otherwise expressly provided herein).

(e) If the Company has, pursuant to any clear and manifest accounting or similar error, paid any Member an amount in excess of the amount to which it is entitled pursuant to this Article 5, such Member shall reimburse the Company to the extent of such excess, without interest, within 30 days after demand by the Company.

Section 5.2 Allocations. Except as otherwise provided in Section 5.3, Profits and Losses for any Fiscal Year shall be allocated among the Members such that, as of the end of such Fiscal Year, the Capital Account of each Member shall equal (a) the amount which would be distributed to them or for which they would be liable to the Company under the Act, determined as if the Company were to (i) liquidate the

assets of the Company for an amount equal to their Book Value and (ii) distribute the proceeds of such liquidation pursuant to Section 5.1 minus (b) the sum of (i) such Member's share of Company Minimum Gain (as determined according to Treasury Regulation Sections 1.704-2(d) and (g)(3)) and such Member's partner minimum gain (as determined according to Treasury Regulation Section 1.704-2(i)) and (ii) the amount, if any, which such Member is obligated to contribute to the capital of the Company as of the last day of such Fiscal Year.

Section 5.3      Special Allocations.

(a)      Nonrecourse deductions shall be allocated to the Members ratably among such Members based upon their respective Membership Interests. If there is a net decrease in Company Minimum Gain during any Taxable Year, each Member shall be specially allocated Profits for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation Section 1.704-2(g). The items to be so allocated shall be determined in accordance with Treasury Regulation Section 1.704-2(f)(6). This Section 5.3(a) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b)      Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulation Section 1.704-2(i). Except as otherwise provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease during any Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to, and subject to the exceptions contained in Treasury Regulation Section 1.704-2(i)(4). This Section 5.3(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted in a manner consistent therewith.

(c)      If any Member that unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.3(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d)      The allocations set forth in Sections 5.3(a), (b) and (c) above (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations under Code Section 704. Notwithstanding any other provisions of this Article 5 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating Profits and Losses among Members so that, to the extent possible, the net amount of such allocations of Profits and Losses and other items and the Regulatory Allocations (including Regulatory Allocations that, although not yet made, are expected to be made in the future) to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

(e)      Profits and Losses described in Section 4.5(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(f) If, and to the extent that, any Member is deemed to recognize any item of income, gain, loss, deduction or credit as a result of any transaction between such Member and the Company pursuant to Code Sections 1272, 1274, 7872, 483, 482, 83 or any similar provision now or hereafter in effect, and the Manager determines that any corresponding Profit or Loss of the Company should be allocated to the Members who recognized such item in order to reflect the Members' economic interests in the Company, then the Company may so allocate such Profit or Loss.

Section 5.4 Tax Allocations.

(a) Except as provided in Sections 5.3(b), (c) and (d), the income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; provided that if any such allocation is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Subject to Section 5.6 hereof, items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value.

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

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

(e) Allocations pursuant to this Section 5.4 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other Company items pursuant to any provision of this Agreement.

(f) The Manager may, but shall not be obligated to, elect to adjust the basis of the assets of the Company for federal income tax purposes in accordance with Code Section 754.

Section 5.5 Withholding Taxes on Distributions. The Company may withhold from Distributions (or allocations of Company income, gain, loss, deduction, and credit) to any Member and pay over to any federal, state, local, or foreign government any amounts required to be so withheld by law and must allocate any such amount to the Member with respect to which such amounts were withheld. For all purposes of this Agreement, all amounts so withheld must be treated as amounts actually distributed to the Member with respect to which such amounts were withheld, and such amounts must be treated as actually distributed at the time paid to the relevant government agency.

## **ARTICLE 6 MANAGEMENT**

### Section 6.1 Appointment of Manager; Intent of Members Regarding Management.

(a) The Members, by Majority Vote, and by the simultaneous vote or consent of all of the Class PF Members, shall appoint a manager (the "Manager") who shall consent to such appointment by executing a counterpart signature page to this Agreement. [Note: This Agreement contemplates a single manager. The Agreement may provide for multiple managers or management by the members.]

(b) The Members hereby appoint [Manager] as the initial Manager of the Company.

(c) It is the intention of the Members that the Company be managed and operated by the Manager in accordance with the purposes set forth in the Articles of Organization of the Company and in Sections 2.2 of this Agreement, and so long as the Company qualifies as a low-profit limited liability company under the Act, in accordance with Section 2.3 of this Agreement. When acting in accordance with this Section 6.1 and other applicable provisions of this Agreement, a Manager is entitled to rely upon the Act and this Section 6.1 as a defense to any claim by a Member (other than a PF Member), a creditor of the Company, or any other person that the Manager breached his, her, or its duty of care (under Section 3059(c) of the LLC Act) or duty of loyalty (under Section 3059(b) of the LLC Act) to the Company and its Members.

[Note: The following language is intended to be illustrative of more extensive provisions relating to the management and operation of the company. These more extensive provisions may be relevant if the company is expected to operate as a certified B corp L3C. The factors that should, or should not, be taken into account by the managers with respect to the management and operation of the L3C is entirely subject to the negotiation of the parties. The following sections should be customized accordingly.]

(c) It is the intention of the Members that the Company be operated in a socially beneficial and responsible manner, with the highest regard for authenticity, integrity, and ethics, even where these principals conflict with the maximization of profit. The Members of the Company believe that this management approach ultimately will serve their best interests and those of the Company over the long-term, and is the most effective method to build the value (both monetarily and otherwise) of the Company. In discharging his or her duties, and in determining what is in the best interests of the Company and its Members, the Manager shall not be required to regard any interest, or the interests of any particular group affected by such action, as a dominant or controlling interest or factor.

(d) In determining what is in the best interests of the Company and the Members and in making business decisions, the Manager shall give due consideration to the following factors, including, but not limited to, the long-term prospects and interests of the Company and its Members; the social, economic, legal, or other effects of any action on the Company's current and retired employees, the suppliers and customers of the Company or its subsidiaries, and the general public (said employees, suppliers, customers, and public citizens, along with the Members, being collectively referred to hereinafter as the "Stakeholders"); together with the short-term, as well as long-term, interests of the Company's Members and the effect of the Company's operations (and its subsidiaries' operations) on the environment and the economy of the state, the region, and the nation.

(e) The Manager is entitled to rely upon the definition of best interests as set forth above in enforcing his or her rights hereunder, and discharging his or her duties, under state law, and such reliance shall not, absent another breach, be construed as a breach of the Manager's fiduciary duty of care and loyalty to the Members, even in the context of a Change in Control Transaction where, as a result of weighing other Stakeholders' interests, the Manager(s) determines to reject an offer or even to accept an offer, between two competing offers, with a lower price per unit, if doing so is consistent with the Company's best interest as expressed above and as determined by the Managers.

(f) Notwithstanding the foregoing, nothing in this Section 6 or elsewhere in this Agreement, except as may exist at law without regard to this Section 6 or any other provisions of this Agreement, express or implied, is intended to create or shall create or grant any right in or for any person or any cause of action by or for any person against the Managers other than a Member. When acting in accordance with this Section 6.1 and other applicable provisions of this Agreement, a Manager is entitled to rely upon the Act and this Section 6.1 as a defense to any claim by a Member, a creditor of the Company, or any other person that the Manager breached his, her, or its duty of care (under Section 3059(c) of the LLC Act) or duty of loyalty (under Section 3059(b) of the LLC Act) to the Company and its Members.

Section 6.2 Management Authority of Manager. Subject to Section 6.4, the Manager shall have exclusive authority to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. Pursuant to the foregoing, it is understood and agreed that the Manager shall have all of the powers, authority and duties accorded to a "manager" by the LLC Act and as otherwise provided by law, and any action taken by the Manager in accordance with this Article 6 shall constitute the act of, and serve to bind the Company. A Manager shall not delegate or assign to any Person other than another Manager then acting any of his or her rights, duties, or powers exercisable under this Agreement in his or her capacity as a Manager; provided, however, that, as set forth in Section 6.3(c) below, this sentence shall not limit the Manager's right to employ other Persons and appoint officers ("Officers") of the Company to assist the Manager in carrying out the Manager's duties regarding the business of the Company. The Manager shall be authorized to execute, acknowledge, and file any and all documents necessary to undertake any action pursuant to this Article 6.

Section 6.3 Specific Powers. Subject to Section 6.4 and in furtherance of Section 6.2 above, the Manager shall have all right, power and authority necessary, appropriate, desirable or incidental to carry out the conduct of the Company's business, including, but not limited to, the right, power and authority:

(a) to incur and pay all reasonable costs, expenses and expenditures, including payments and reimbursements to affiliates of the Manager in accordance with this Agreement, incurred in good faith in the course of the conduct of the Company business;

(b) to finance the operation of the Company's business by causing it to borrow funds from any available sources (including the Members or their affiliates) upon such terms and conditions as the Manager deems proper, which financing may be secured by one or more deeds of trust and other security interests on the property and assets of the Company, to take any and all actions and to execute, acknowledge and deliver all documents in connection therewith;

(c) to employ and dismiss from employment any and all employees, agents, independent contractors, consultants, appraisers, attorneys and accountants; to appoint Officers of the

Company with the authority to carry out the day-to-day business of the Company and, within the limitations of their appointment, to execute contracts and other instruments on behalf of the Company; and to pay such fees, expenses, salaries, wages or other compensation to such Persons, as the Manager determines to be reasonable;

(d) to purchase, or contract to purchase, any property, real or personal, for any purposes connected with the Company's business at any time upon such terms as the Manager agrees;

(e) to sell, exchange, transfer, contribute, mortgage, pledge, encumber, lease or otherwise dispose or transfer the property or assets of the Company, or any interest therein, at any time upon such terms as the Manager agrees; provided, however, that the sale, exchange, transfer, contribution, mortgage, pledge, encumbrance, lease or other disposition or transfer of all or substantially all of the assets of the Company shall require an affirmative vote of the Members pursuant to Section 6.4(a)(ii);

(f) to pay, extend, renew, modify, submit to arbitration, prosecute, defend or compromise, upon such terms as the Manager deems proper and upon any evidence as the Manager may deem sufficient, any obligation, suit, liability, cause of action or claim, either in favor of or against the Company;

(g) to pay or cause to be paid any and all taxes, charges or assessments that may be levied, assessed or imposed on any of the property or assets of the Company;

(h) to invest funds which, in the judgment of the Manager, are not immediately required for the conduct of the Company's business, in such investments as may be selected by the Manager; and

(i) to execute, acknowledge, and deliver any and all instruments to effectuate any and all of the foregoing.

Section 6.4 Actions Requiring Super-Majority Member Vote; Meetings of Members.

(a) Notwithstanding the foregoing, approval of any of the following actions by the Company shall require an affirmative vote of sixty-six and two-thirds percent (66-2/3%) of all of the Members, and the simultaneous vote or consent of all of the Class PF Members:

(i) any merger or consolidation of the Company;

(ii) the sale, exchange, transfer, contribution, mortgage, pledge, encumbrance, lease or other disposition or transfer of all or substantially all of the assets of the Company;

(iii) any amendment to the Company's Articles of Organization (other than ministerial changes) under Section 3024(c) of the LLC Act;

(iv) any amendment of this Agreement (other than ministerial changes); provided, however, that any amendment of Section 2.2, Section 2.3 or Article 8 [(whether ministerial or otherwise)] shall require the affirmative vote or consent of all Class PF Members];

(v) the dissolution or winding up of the Company;

- (vi) [except for sales or dispositions of property in the ordinary course of business, any acquisition or divestiture by the Company, regardless of size];
- (vii) [the formation of any Subsidiary of the Company];
- (viii) [the admission of New Members into the Company pursuant to Section 3.4 hereof];
- (ix) [the adoption of any compensation or benefit plan by the Company, or any material change or amendment thereto];
- (x) [the appointment or change of auditors for the Company];
- (xi) [any change in the Company's accounting policies]; and
- (xii) commencing or settling litigation involving the Company that would (or could) result in liability to the Company of more than \$[50,000].

[Note: The foregoing provisions should be carefully considered and separately negotiated by the parties. The above language is provided for illustration purposes only.]

(b) A meeting of the Members may be called at any time by the Manager, or by Members holding not less than twenty-five percent (25%) of the Membership Interests, upon thirty (30) days' prior written notice (or such shorter period as all of the Members may agree in writing) to all of the Members specifying the time and place of, and agenda for, the meeting.

(i) Members may participate in any meeting by attending in Person, by proxy or through the use of a conference telephone or similar communications equipment by means of which all Members participating in the meeting can hear each other.

(ii) A Member may vote by written proxy, which may be a power of attorney, signed by such Member. Such proxy shall be filed with the Manager before the applicable meeting begins. A proxy shall specify a specific meeting to which it relates and shall be valid only for such specified meeting. A proxy may be revoked at any time prior to the meeting for which it was intended. Attendance by a Member at a meeting for which a proxy has been given shall without any further action by such Member be deemed to revoke such proxy.

(iii) The presence in Person, by proxy or as otherwise permitted by this Agreement, of Members holding a majority of the Membership Interests shall constitute a quorum for purposes of conducting business at any meeting of the Members. If a quorum is present at the beginning of any meeting, the Members may continue to conduct business at such meeting until such meeting is adjourned even if one or more of the Members depart from such meeting and such departure causes a quorum to no longer exist.

(c) Except as expressly provided otherwise in this Agreement, the affirmative vote of Members holding a majority of the Membership Interests present at a duly called and held meeting of the Members (a "Majority Vote") shall be the act of the Members. Notwithstanding Ver. Stat. Ann. 11-21-3059 or any other provisions of the Act, unless prohibited by non-waivable provisions of the Act, Members having

an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Membership Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.

(d) Action required or permitted to be taken by the Members at a meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the Members entitled to vote and having the requisite Membership Interest required to approve such action. Action taken under this Section is effective when the Members required to approve such action have signed the consent, unless the consent specified a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

(e) In lieu of any procedures contained in Section 6.4(b) of this Agreement or the Act, when any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

(f) In lieu of any procedures contained in Section 6.4(b) of this Agreement or the Act, Members also may meet by conference telephone call if all Members can hear one another on such call and the requisite notice is given or waived.

Section 6.5 Term. The Manager holds office for an indefinite term or until his or her earlier death, resignation, or removal.

Section 6.6 Resignation. The Manager may resign at any time by giving written notice of his or her resignation to all Members, such resignation to be effective upon receipt or three (3) days after dispatch by the Manager (whichever is earlier) unless a later date is specified in the notice and to be without prejudice to the contract rights, if any, of any party.

Section 6.7 Removal. The Manager may be removed, with or without cause, by a Majority Vote, with the simultaneous vote or consent of all of the PF Members, such removal to be without prejudice to the contract rights, if any, of any party.

Section 6.8 Other Business Interests and Activities. The Manager shall not be required to manage the Company as his or her sole and exclusive function, and a Manager or a Member may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right in or to such other ventures by virtue of this Agreement or the relationship among the Members created hereby.

Section 6.9 Conflict of Interest.

(a) A Member, a Manager or any affiliate thereof shall not be deemed to have breached a duty to the Company by entering into any transaction or agreement in which such Member, Manager or affiliate has a financial interest if either (i) the transaction is fair to the Company or (ii) a majority of the disinterested Members, knowing the material facts of the transaction and the interest of the Member, Manager or affiliate, have rejected the opportunity.

(b) No Manager, Member or any affiliate thereof shall be obligated to present any opportunity to the Company, provided, however, that a Member, Manager or affiliate shall present to the Company and shall not take for himself, herself or itself, directly or indirectly, any such opportunity or recommend it to a third party if it would be within the purpose of the Company unless (i) the Company does not have the financial ability to pursue the opportunity or (ii) a majority of the disinterested Members, knowing the material facts of the transaction and the interest of the Member, Manager or affiliate, have rejected the opportunity.

Section 6.10 Exculpation. Except as otherwise expressly provided by the LLC Act or herein, no Manager or Member shall be liable, responsible or accountable in damages or otherwise to the Company, or to any Member for any acts or omissions performed or omitted in good faith and in a manner reasonably believed by the Manager or Member to be within the scope of the authority conferred upon him, her or it by this Agreement and in the best interests of the Company. Specifically, and without limiting the scope of the foregoing, no Member shall be liable, responsible or accountable in damages or otherwise to the Company or any other Member for any action taken by the Member, in good faith, as Tax Matters Partner in connection with the examination by the IRS of the Company's Federal partnership tax return or the determination, protest, adjustment or adjudication of any Federal or state income tax liability of any Member resulting from the Company.

Section 6.11 Limitation on Members' Authority. No Member shall be an agent of the Company solely by virtue of being a Member. No Member shall have any authority to act for or on behalf of the Company solely by virtue of being a Member, except as may be approved by the Manager or by the Members, in each case as provided in this Agreement and under the LLC Act.

Section 6.12 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which such Distribution is made, as the case may be, shall be the record date for such determination of Members unless the Managers otherwise shall specify another record date. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

## **ARTICLE 7**

### **TRANSFER OF INTERESTS**

Section 7.1 Restrictions on Transfers. Except in accordance with the provisions of both Section 3.4, Section 8.2, or this Article 7, no Member may transfer, sell, assign, pledge, hypothecate, bequeath, give, create a security interest in or lien upon, place in trust (voting or otherwise), assign, or in any other way encumber or dispose of, directly or indirectly, and whether or not by operation of law or for value ("Transfer") its Membership Interest. Further, except as required pursuant to Section 3081(1) of the LLC Act, or as permitted otherwise herein (including but not limited to Article 8), no Member shall have the right to withdraw or resign from the Company, and any such withdrawal or resignation shall be deemed to be wrongful and in violation of this Agreement.

Section 7.2 Transfer Notice. In the event a Member (the "Selling Member") desires to Transfer any or all of the Membership Interests held by such Selling Member (the "Transferring Interests") to a person (the "Offeree"), the Selling Member shall promptly deliver to each of the other Members (the "Non-

Selling Members") written notice of the intended Transfer (the "Transfer Notice"), which must set forth the material terms and conditions thereof, including the purchase price for the Transferring Interests and the identity of the Offeree and any beneficial owners thereof.

Section 7.3      Exercise of Right by Non-Selling Members.

(a)      The Non-Selling Members shall have a right (the "Option"), for a period of thirty (30) days following receipt of a Transfer Notice (the "Option Period"), to purchase the Transferring Interests upon the same terms and conditions specified in the Transfer Notice; provided, however, that the purchase price shall be an amount equal to the lesser of:

- (i)      the Fair Market Value of the Transferring Interests; or
- (ii)     the purchase price specified in the Transfer Notice.

(b)      Such right is exercisable by written notice (the "Exercise Notice") delivered by the Non-Selling Members to the Selling Member prior to the expiration of the Option Period.

(c)      If more than one Non-Selling Member elects to exercise the Option, the Transferring Interests shall be allocated based on the ratio that each participating Non-Selling Member's Membership Interest in the Company bear to the total of all participating Non-Selling Members' Membership Interests in the Company.

Section 7.4      Types of Exercise by the Non-Selling Members. If such right is exercised by the Non-Selling Members with respect to:

(a)      all of the Transferring Interests specified in the Transfer Notice, then the Non-Selling Members shall effect the purchase of such Transferring Interests, including payment of the purchase price therefor, not more than fifteen (15) business days after the delivery of the Exercise Notice and, at such time, the Selling Member shall deliver to the Non-Selling Members a duly endorsed assignment of the Transferring Interests to be purchased; or

(b)      only a portion of the Transferring Interests specified in the Transfer Notice, then:

(i)      the Non-Selling Members shall notify the Offeree of their intention to purchase only a portion of the Transferring Interests within the Exercise Period; and

(ii)     this right to purchase is contingent upon the Offeree's election to purchase the remaining balance of the Transferring Interests; and

(iii)    the Non-Selling Members' purchase of such Transferring Interests must be consummated, if at all, at the time of the Offeree's purchase; but

(iv)    in the event the Offeree elects not to purchase the remaining Transferring Interests, the Non-Selling Members are deemed to have waived their rights of first refusal.

Section 7.5 Non-Exercise of Right by Non-Selling Members.

(a) In the event the Exercise Notice is not given by the Non-Selling Members to the Selling Member and the Offeree within the Exercise Period or the Offeree elects not to purchase the remaining Transferring Interests in accordance with Section 7.4(b)(iv), the Non-Selling Members are deemed to have waived their rights of first refusal and the Selling Member has a period of thirty (30) days thereafter in which to sell all, but not less than all, of the Transferring Interests to the Offeree identified in, and upon terms and conditions (including the purchase price) no more favorable to the Offeree than those specified in the Transfer Notice.

(b) In the event the Selling Member does not consummate the sale or disposition of the Transferring Interests within such thirty (30) day period, the Non-Selling Members' rights of first refusal are applicable to any subsequent disposition of the Transferring Interests by the Selling Member.

Section 7.6 Rights and Obligations of Transferee.

(a) Upon any Transfer of Membership Interests in accordance with the provisions of this Article 7, such Membership Interests remain subject to the restrictions of this Agreement.

(b) Each purchaser of Transferring Interests succeeds to the rights of the Selling Member with regard to such Transferring Interests, except that:

(i) if the Non-Selling Members exercise their rights of first refusal and purchase any Transferring Interests, then any such Transferring Interests are automatically converted to the class of Membership Interests of the Non-Selling Member purchasing the Transferring Interests; or

(ii) if the purchaser is a third party to this Agreement, such purchaser is subject to the terms of Section 3.4 concerning admission to the Company as a New Member and must take such other actions and execute such other documents as the Company reasonably requests.

Section 7.7 Expenses. The Selling Member shall pay all expenses incurred by the Company in connection with a Transfer in accordance with the provisions of this Article 7.

**ARTICLE 8**  
**SPECIAL RIGHTS OF CLASS PF MEMBERS**

Section 8.1 Reports. In connection with any Class PF Member's requirement under Sections 4945(d)(4)(B) and 4945(h) of the Code to exercise expenditure responsibility over any PRIs and in addition to the quarterly financial statements provided for under Section 9.3, the Class PF Members shall have the right to obtain such full and complete reports or other documentation (and require the Company to take such other action as may be reasonably requested to enable any Class PF Member to comply with the requirements of Section 4945(h) of the Code) as such Class PF Member reasonably shall request in writing to confirm that its investment has been utilized by the Company for the purpose for which it is made and show how its investment was spent. The Company shall provide such reports or other documentation within thirty (30) days of its receipt of a written request from such Class PF Member.

Section 8.2 Redemption Notice. If at any time or from time to time, as determined in the reasonable discretion of any PF Member by delivering written notice (the "Redemption Notice") to the

Members and the Manager, (i) the Company shall fail to timely provide any reports or other documentation requested in accordance with Section 8.1 or Section 9.3 or (ii) the Company violates any provision of Section 2.3, then any electing Class PF Member may compel the Company to purchase and redeem its Membership Interest in accordance with Section 8.3 below.

Section 8.3      Redemption Election.

(a)      Redemption Election. Upon receipt of a Redemption Notice, the Manager shall have thirty (30) days to cure any failure under Section 8.2 above. If the Manager is unable to cure such failure to the reasonable satisfaction of the PF Member providing the Redemption Notice within the thirty (30) day period following delivery of the Redemption Notice, then at the end of such thirty (30) day period the Class PF Member delivering the Redemption Notice immediately shall so notify in writing all other Class PF Members (the "Failure to Cure Notice"). Thereafter, each Class PF Member shall within thirty (30) days of the date of the Failure to Cure Notice elect by written notice to the Manager (the "Redemption Election") whether to compel the Company to redeem each such Class PF Member's Membership Interest in accordance with this Agreement. If the Manager is so notified by delivery of a Redemption Election, then such redemption of all the electing Class PF Members shall take place on a date fixed by the Company, and announced in writing to the Members, which date shall be not more than sixty (60) calendar days after the date of the first timely delivered Redemption Notice, but such redemption shall be effective as of close of business immediately prior to the date of the first timely delivered Redemption Notice. If any Class PF Member fails to deliver a Redemption Election on a timely basis, then such Class PF Member shall be deemed not to have made an election to be redeemed for the Redemption Price under this Article 8, but shall have been deemed to have elected to convert such Class PF Member's Membership Interest to a Class A Member's Membership Interest in accordance with Section 8.3(b) below. Alternatively, in lieu of causing the Company to redeem the Membership Interest of any electing Class PF Member, the Manager may, notwithstanding anything to the contrary elsewhere in this Agreement, cause the Company to be liquidated and dissolved in accordance with Section 12 hereof.

(b)      Closing of Redemption. At the closing of any redemption hereunder (the "Closing"), the Company shall purchase and each Class PF Member to be redeemed hereunder shall sell all of the applicable Class PF Member's Membership Interests, and each holder of Class PF Member's Membership Interests, to be redeemed hereunder shall deliver to the Company duly executed instruments transferring title to the applicable Class PF Member's Membership Interests to the Company, free and clear of all liens and encumbrances, against payment of the applicable Redemption Price. The Redemption Price shall be paid by the Company to each redeeming Class PF Member at the closing by cashier's certified check or by wire transfer of immediately available funds to an account designated by such Class PF Member. [Note: Negotiated terms could include payment via a promissory note. If payment via promissory note is permitted, then the terms of the note (i.e., amortization, interest, security, etc.) must be specified.] Alternatively, if so specified in a Class PF Member's Redemption Election, or if such Class PF Member does not deliver a Redemption Election on a timely basis, then at the closing (but effective as of the close of business of the day immediately prior to the date of the Redemption Notice) the Company shall convert such Class PF Member's Membership Interest into a Class A Membership Interest, and the Capital Contribution, Unreturned Capital Contribution, Capital Account, and other tax and economic attributes of such Member's Class PF Membership Interest shall carryover and become a part of the converted Class A Membership Interest and from and after the effective date the Class PF Member shall be considered a Class A Member for all purposes under this Agreement.

(c) Distribution of Funds Upon Redemption. If the funds of the Company available for payment of the Redemption Price for Class PF Membership Interests are insufficient, as determined by the Manager in its [his/her] sole discretion, then (i) those funds which are available, as determined by the Manager in its sole discretion, shall be used to redeem all so electing Class PF Membership Interests in accordance with Section 8.3(b), and (ii) when additional funds of the Company are legally available to pay the balance of the Redemption Price, as determined by the Manager in its [his/her] sole discretion, the Company immediately shall use such funds to pay all or such portion of the balance of the Redemption Price until such time as the entire Redemption Price has been paid to all so electing Class PF members.

(d) Redeemed Units. Upon consummation of the Closing, all Class PF Membership Interests shall be considered redeemed for purposes of this Agreement effective immediately prior to the date of the Redemption Notice, notwithstanding the fact that the Company may have a continuing obligation under this Section 8.3 to pay the Redemption Price. Except for any continuing right to be paid the Redemption Price, all rights of the holder of such Class PF Membership Interest shall cease (subject, however to such Member's conversion to Class A Membership Interests, in which case such Member shall have the rights of a Class A Member), and such Class PF Membership Interest shall not be deemed to be outstanding after the Closing of any redemption hereunder.

## **ARTICLE 9**

### **BOOKS, RECORDS AND ACCOUNTING**

Section 9.1 Books and Records. There shall be maintained and kept at all times during the continuation of the Company, proper and usual books of account that shall accurately reflect the condition of the Company and shall account for all matters concerning the management thereof, which books shall be maintained and kept at the principal office of the Company or at such other place or places as the Manager may from time to time determine. The Company's books and records shall be maintained using a method of accounting reasonably determined by the Manager. The Company's books and records, including any records providing the information specified in Section 3058 of the LLC Act, shall be open to inspection by any Member at any time during ordinary business hours upon reasonable notice and shall not be unreasonably restricted. Such books and records shall include separate income and capital accounts for each Member.

Section 9.2 Fiscal Year. Unless otherwise determined by the Manager, the Company's fiscal year shall be the calendar year.

Section 9.3 Financial Statements. The Manager shall provide full and complete financial statements to all Members concerning the financial condition and results of operation of the Company as promptly as practicable after the end of each fiscal quarter. Such quarterly financial statements shall be unaudited unless the Manager, in its sole discretion, determines that audited financial statements are necessary or appropriate. [In any quarter in which any Class PF Member has an investment in the Company that is treated by such Class PF Member as a PRI, each [quarterly] report shall be accompanied by a statement signed by the Manager to the effect that the Company has complied with the terms governing such PRI.] In addition, the Manager shall provide a short narrative explanation of how a PF Member's funds have been used to further the purposes described in Section 2.2.

## **ARTICLE 10**

### **TAXATION**

[Note: Depending on the elections of the LLC and the number of members an LLC may also be a disregarded entity or a corporation for tax purposes. Legal and accounting professionals should be consulted to determine which form is more appropriate.]

Section 10.1 Status of the Company. The Members acknowledge that this Agreement creates a partnership for federal and state income tax purposes (and only for such purposes), and hereby agree not to elect to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar state statute.

Section 10.2 Tax Elections. The Manager shall cause the Company to file an election under Section 754 of the Code and the Treasury Regulations thereunder to adjust the basis of the Company assets under Section 734(b) or 743(b) of the Code and a corresponding election under the applicable sections of state and local law. The Manager shall have the authority to make all other Company elections permitted under the Code, including elections of methods of depreciation.

Section 10.3 Company Tax Returns. The Manager shall cause the necessary federal income and other tax returns and information returns for the Company to be prepared. Each Member shall provide such information, if any, as may be needed by the Company for purposes of preparing such tax returns and information returns. The Manager shall deliver to each Member within ninety (90) days after the end of each fiscal year a copy of the federal income tax returns for the Company as filed with the appropriate taxing authorities, and upon the written request of any Member, a copy of any state and local income tax return as filed.

Section 10.4 Tax Audits.

(a) The Members, by majority vote of all Members, shall designate a Member to be responsible for dealing with the taxing authorities and tax related issues (the "Tax Matters Partner").

(b) The Tax Matters Partner, as an authorized representative of the Company, shall direct the defense of any claims made by the IRS to the extent that such claims relate to the adjustment of Company items at the Company level. The Tax Matters Partner shall promptly deliver to each Member a copy of any notice of beginning of administrative proceedings or any report explaining the reasons for a proposed adjustment received from the IRS relating to or potentially resulting in an adjustment of Company items. The Tax Matters Partner shall, unless the Manager decides otherwise, diligently and in good faith contest any proposed adjustment of a Company item that principally affects the Members at the administrative and judicial levels, including, if appropriate or if required by the Manager, appealing any adverse judicial decision, and shall consider in good faith any suggestions made by any Member or its counsel regarding the conduct of such administrative or judicial proceedings. The Tax Matters Partner shall keep each Member advised of all material developments with respect to any proposed adjustment that comes to its attention, including, without limitation, the scheduling of all conferences and substantive telephone calls with the IRS. Each Member shall be entitled, at its own expense, to attend all meetings with the IRS and to review in advance any material written information (including, without limitation, any pleadings, memoranda or similar items) to be submitted to the IRS. Without first obtaining the consent of the Manager, the Tax Matters Partner shall not, with respect to any proposed adjustment of a Member item

that materially and adversely affects any Member, (A) enter into a settlement agreement that purports to bind Members other than the Tax Matters Partner (including, without limitation, any stipulation consenting to an entry of decision by any tax court), or (B) enter into an agreement or stipulation extending the statute of limitations.

(c) The Tax Matters Partner shall promptly deliver to each Member a copy of all notices, communications, reports or writings of any kind with respect to income or similar taxes received from any state or local taxing authority relating to the Company that might materially and adversely affect each Member, and shall keep such Members advised of all material developments with respect to any proposed adjustment of Company items that come to its attention.

(d) Each Member shall continue to have the rights described in this Section 13.4 with respect to tax matters relating to any period during which it was a Member, whether or not it is a Member at the time of the tax audit or contest.

## **ARTICLE 11** **INDEMNIFICATION**

Section 11.1 Indemnification. To the fullest extent permitted by law, the Company shall indemnify each present or former Manager or officer of the Company (an "Indemnified Party") against all legal and accounting expenses, amounts paid in settlement, judgments, fines and penalties actually and reasonably incurred by or levied against such Indemnified Party (such amounts, including legal and accounting expenses, collectively, "Costs," except to the extent that such Costs resulted from the Indemnified Party's fraud or willful misconduct (including willful breach of this Agreement) in connection with any action, suit, arbitration, alternative dispute resolution mechanism, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative or investigative in nature, except a proceeding initiated by a Member to enforce such Member's rights under this Agreement (a "Proceeding"). The termination of any Proceeding, whether by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that an Indemnified Party did not meet the standard set forth in the preceding sentence. To the fullest extent permitted by applicable law, an Indemnified Party shall be conclusively presumed to have met the relevant standards of conduct for indemnification pursuant to this Section 11.1, unless and until a court of competent jurisdiction, after all appeals, finally determines to the contrary, and the Company shall bear the burden of proof of establishing by clear and convincing evidence that such Indemnified Party failed to meet such standards of conduct. [Note: The following special indemnification provision with respect to PF Members is subject to negotiation and should be carefully considered by all of the Members and their respective counsel as well as counsel to the Company.] [Furthermore, the Company shall indemnify each present or former PF Member (a "PF Indemnified Party") against any excise taxes imposed upon the PF Member under IRC §§ 4942-4945, including legal and accounting expenses, amounts paid in settlement, assessments, fines and penalties actually and reasonably incurred by or assessed against and paid by such PF Indemnified Party (such amounts, including legal and accounting expenses, collectively, "Excise Tax Costs") as a result of the PF Member's Membership Interest in the Company failing to qualify as a PRI due to the Company's or any Manager's breach of any terms of this Agreement or the LLC Act, or due to any misrepresentation or material omission with respect to any report or other information required to be delivered by the Company or a Manager to the PF Member under the terms of this Operating Agreement or the LLC Act. For purposes of the remainder of this Article 11 and any other provisions of this Agreement or the LLC Act pertaining to indemnification of a Member, the term Indemnified Party shall include a PF Indemnified Party.

Section 11.2 Successful Defense. Notwithstanding any other provision of this Agreement, to the extent that an Indemnified Party has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 11.1, or in defense of any claim, issue or matter therein, such Indemnified Party shall be indemnified against Costs actually and reasonably incurred in connection therewith to the fullest extent permitted by the laws of the State of Vermont, including, without limitation, any amendments thereto subsequent to the date of this Agreement that increase the protection of the Members and the officers of the Company allowable under such laws.

Section 11.3 Payment of Costs in Advance. Costs incurred by an Indemnified Party in connection with a Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written undertaking by or on behalf of such Indemnified Party to repay such amount if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified by the Company as set forth in this Article 11. Notwithstanding the foregoing, if the Manager reasonably determines, after consulting with counsel, that it is unlikely that an Indemnified Party's action met the standard for indemnification set forth in Section 11.1, then the Company shall not advance to such Indemnified Party any Costs that consist of amounts paid in settlement, judgments, fines or penalties.

Section 11.4 Indemnification of Other Agents. The Company may, but shall not be obligated to, indemnify any Person (other than an Indemnified Party) who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding (including any Proceeding by or in the right of the Company) by reason of the fact that such Person is or was an agent of the Company, against all Costs actually and reasonably incurred by such Person in connection with such Proceeding under the same circumstances and to the same extent as is provided for or permitted in this Article 11 with respect to an Indemnified Party, or with respect to such circumstances and on such terms as the Manager may determine.

Section 11.5 Indemnity Not Exclusive. The indemnification and advancement of Costs provided by or granted pursuant to the provisions of this Article 11 shall not be deemed exclusive of any other rights to which any Person seeking indemnification or advancement of Costs may be entitled under any agreement, determination of the Manager or otherwise, both as to action in such Person's capacity as an agent of the Company and as to action in another capacity while serving as an agent.

Section 11.6 Heirs, Executors and Administrators. The indemnification and advancement of Costs provided by, or granted pursuant to, this Article 11 shall, unless otherwise provided when authorized or ratified, continue as to an individual who has ceased to be an agent of the Company and shall inure to the benefit of such individual's heirs, executors and administrators.

Section 11.7 Right to Indemnification Upon Application.

(a) Any indemnification or advance under this Article 11 shall be made promptly, and in no event later than sixty (60) days, after the Company's receipt of the written request of an Indemnified Party therefore, unless, in the case of an indemnification, a determination shall have been made as provided in Sections 11.1 or 11.6.

(b) The right of a Person to indemnification or an advance of Costs as provided by this Article 11 shall be enforceable in any court of competent jurisdiction. The burden of proving by clear and convincing evidence that indemnification or advances are not appropriate shall be on the Company.

Neither the failure by the Manager nor independent legal counsel to have made a determination that indemnification or an advance is proper in the circumstances, nor any actual determination by the Manager or independent legal counsel that indemnification or an advance is not proper, shall be a defense to the action or create a presumption that the relevant standard of conduct has not been met. In any such action, the Person seeking indemnification or advancement of Costs shall be entitled to recover from the Company any and all expenses of the types described in the definition of Costs in Section 11.1 actually and reasonably incurred by such Person in such action, but only if such Person prevails therein. A Person's Costs incurred in connection with any Proceeding concerning such Person's right to indemnification or advances in whole or in part pursuant to this Agreement shall also be indemnified by the Company regardless of the outcome of such a Proceeding, unless a court of competent jurisdiction finally determines that each of the material assertions made by such Person in the Proceeding was not made in good faith or was frivolous.

Section 11.8 Limitations on Indemnification. No payments pursuant to this Agreement shall be made by the Company:

(a) to indemnify or advance funds to any Person with respect to a Proceeding initiated or brought voluntarily by such Person and not by way of defense, except with respect to a Proceeding brought to establish or enforce a right to indemnification under this Agreement, otherwise than as required under the laws of the State of Vermont; provided, however, that indemnification or advancement of Costs may be provided by the Company in specific cases if a determination is made that such indemnification or advancement is appropriate, which determination shall be made by the Manager;

(b) to indemnify or advance funds to any Person for any Costs resulting from such Person's conduct which is finally adjudged to have failed to have met the relevant standard of conduct set forth in Section 11.1; or

(c) if a court of competent jurisdiction finally determines that any indemnification or advance of Costs hereunder is unlawful.

Section 11.9 Partial Indemnification. If a Person is entitled under any provision of this Article 11 to indemnification by the Company for a portion of Costs incurred by such Person in any Proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify such Person for the portion of such Costs to which such Person is entitled.

Section 11.10 Insurance. The Company shall have the power to purchase and maintain insurance or other financial arrangement on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Article 11 or of Section 3062 or any other provision of the LLC Act. In the event a Person shall receive payment from any insurance carrier or from the plaintiff in any action against such Person with respect to indemnified amounts after payment on account of all or part of such indemnified amounts having been made by the Company pursuant to Section 11.1, such Person shall reimburse the Company for the amount, if any, by which the sum of such payment by such insurance carrier or such plaintiff and payments by the Company to such Person exceeds such indemnified amounts; provided, however, that such portions, if any, of such insurance proceeds that are required to be reimbursed to the insurance carrier under the terms of its insurance policy shall not be

deemed to be payments to such Person hereunder. In addition, upon payment of indemnified amounts under the terms and conditions of this Agreement, the Company shall be subrogated to such Person's rights against any insurance carrier with respect to such indemnified amounts (to the extent permitted under such insurance policies). Such right of subrogation shall be terminated upon receipt by the Company of the amount to be reimbursed by such Person pursuant to the second sentence of this Section 11.10.

## **ARTICLE 12**

### **DISSOLUTION; WINDING UP; DISTRIBUTION OF ASSETS**

Section 12.1 Events of Dissolution. Except as provided in Section 8.3 and this Section 12.1, no act or event (including any event of dissociation specified in Section 3081 of the LLC Act) shall dissolve the Company. Only of the following acts or events shall dissolve the Company:

(a) Subject to Section 6.4 hereof, the vote of Members holding sixty six and two-thirds percent (66 2/3%) of the Membership Interests in the Company.

(b) The unanimous written consent or vote of all of the Class PF Members to dissolve the Company.

(c) An event that makes it unlawful for all or substantially all of the business of the Company to be continued, unless the Company cures such event within ninety (90) days after notice to the company of the event as provided in Section 3101(4) of the LLC Act.

(d) The entry of a decree of judicial dissolution under Section 3101(5) of the LLC Act.

Section 12.2 Winding Up. Upon dissolution of the Company by reason of any event described in Section 12.1 above, the Manager shall commence to wind up the affairs of the Company and to liquidate its business and assets. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company in order to minimize to the extent possible the normal losses attendant upon such liquidation. The Manager shall have the full, complete and exclusive right and unlimited discretion to perform any and all acts and to take any and all actions which may be necessary, appropriate or incidental to operate and manage the business of the Company in the process of liquidating and winding up. The authority of the Manager shall continue as long as necessary, and the exercise of such authority shall be deemed a proper act in winding up the affairs of the Company. Further, the Manager is authorized to sell the property and assets of the Company in a bona fide sale or sales to any party or parties (including a Member) at such price and upon such terms as the Manager may deem advisable, having due regard for the interests of the Members. Any such sale or sales shall be deemed a proper act in winding up the affairs of the Company.

Section 12.3 Continuing Validity and Authority. Any act or event (including the passage of time) causing dissolution of the Company shall not affect the validity of, or shorten the term of, any lease, deed of trust, mortgage, contract or other obligation entered into by or on behalf of the Company, or acquired by the Company as assignee. The full rights, powers and authorities of the Company and Manager shall continue so long as appropriate and necessary to complete the process of winding up the business and affairs of the Company.

Section 12.4 Distribution of Assets. Upon the winding up of the Company, the Company shall make reasonable provision to pay all claims and obligations of the Company, including all costs and expenses of the liquidation and all contingent, conditional, or unmatured claims and obligations that are

known to the Company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Any remaining assets shall be distributed as follows:

(a) first, to creditors, including Members in their capacities as creditors, in the order of priority as provided by law; and

(b) second, to Members in accordance with Section 5.1. Any non-cash assets distributed to the Members shall first be written up or written down to their Fair Market Value, thus creating Profit or Loss (if any) which shall be allocated in accordance with Section 5.2.

Section 12.5 Negative Capital Account Balances. If any Member has a deficit balance in such Member's Capital Account (after giving effect to all Contributions, Distributions and Allocations for all fiscal years, including the fiscal year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

Section 12.6 No Personal Liability. Except as required by law, no Member or officer of the Company shall be Personally liable for any debts, liabilities or obligations of the Company, whether to the Company, any Member or to the creditors of the Company, beyond, in the case of Members, the amount of any distribution (including the return of any capital contribution) made to such Member required to be returned to the Company under the LLC Act. Each Member shall look solely to the assets of the Company for all Distributions with respect to the Company and for the return of such Member's capital contributions and shall have no recourse therefor against any Member. The Members shall not have any right to demand or receive property other than cash upon dissolution and termination of the Company or to demand the return of their capital contributions to the Company prior to dissolution and termination of the Company.

### **ARTICLE 13** **MISCELLANEOUS**

Section 13.1 Waiver of Right of Partition. Except as expressly provided in this Agreement, no Member may, either directly or indirectly, take any action to require partition of the Company or of any of the Company's assets or properties or cause the sale of any of the Company's assets or properties and, notwithstanding any provision of law to the contrary, each Member (and such Member's legal representative, successor or assign) hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale with respect to such Member's ownership interest in the Company, or with respect to any assets or properties of the Company.

Section 13.2 Maintenance of Status. Each Member is hereby authorized to take such steps as such Member believes is necessary to (i) maintain the Company's status as an L3C formed under the laws of the State of Vermont and its qualification to conduct business in any jurisdiction where the Company does business and is required to be qualified, and (ii) cause the Company to continue to be treated as a partnership for federal and state income tax purposes.

Section 13.3 Governing Law. This Agreement and any controversies, claims or arbitration hereunder shall be governed by and construed in accordance with the laws of the State of Vermont, without regard to its conflict of law rules.

Section 13.4 Deadlock; Arbitration. All claims, disputes, controversies or other matters in question arising under or relating to this Agreement (collectively, "Disputes") shall, if not resolved by the Members, be resolved through binding arbitration in accordance with the commercial arbitration rules and practices of the American Arbitration Association. The site of such arbitration shall be in the State of Vermont, or such other place as is approved by the Members. The cost of each arbitration proceeding, including without limitation the arbitrator's compensation and expenses, hearing room charges, court report transcript charges, reasonable attorney fees and expenses, etc., shall be allocated among the parties to such Dispute based upon the percentage which the portion of the contested amount in such Dispute not awarded to each party bears to the amount actually contested by such party. The parties hereto agree that the remedies provided under this Section 13.4 shall be the sole and exclusive remedies for resolving and remedying all Disputes hereunder.

Section 13.5 Binding Effect. Except as otherwise specifically provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, heirs, administrators and executors.

Section 13.6 Pronouns and Number. 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, the feminine or the neuter gender shall include the masculine, feminine and neuter.

Section 13.7 Capitalized Terms. All capitalized terms used in this Agreement shall have the meanings set forth in this Agreement.

Section 13.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Section 13.9 Notices. Any notices permitted or required under this Agreement shall be deemed to have been given when delivered in Person or by courier or three (3) days after being deposited in the U.S. mail, postage prepaid, and addressed to the Company at its principal place of business and to any Member at the address reflected on the books and records of the Company.

Section 13.10 Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties hereto with respect to the matters set forth herein and supersedes all prior understandings or agreements between the parties with respect to such matters. Except as expressly contemplated otherwise in this Agreement (including without limitation Section 6.4 hereof), or with respect to ministerial matters (including without limitation amendments to reflect duly authorized Transfers of Membership Interests, admission of new Members, and redemptions of PF Members) as the Manager shall determine in good faith, this Agreement may be amended only by the consent of the Members in accordance with Section 6.4]; provided, however, that whether considered ministerial or material, Section 2.2, Section 2.3 or Section 8.2 may be amended only upon the affirmative vote of each Class PF Member]. If an amendment is duly authorized in compliance with this Section 13.10, then the Manager shall take all necessary and appropriate action to implement such amendment and, as necessary, to modify this Agreement.

Section 13.11 Third Parties. Nothing in this Agreement, whether express or implied, shall be construed to give any Person other than a Member or the Company any legal or beneficial or other equitable right, remedy or claim under or in respect of this Agreement, any covenant, condition, provision or agreement contained herein or the property of Company.

Section 13.12 Waiver. No failure by any Member to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 13.13 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement, or the application of such provision to any Person or circumstances shall be held invalid, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected hereby.

Section 13.14 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or such Member's counsel.

Section 13.15 Investment Representation. ANY SECURITIES CREATED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM SUCH REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAVE THEY BEEN REGISTERED UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY OTHER JURISDICTION. THE INTERESTS CREATED HEREBY HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS.

[Note: Depending on the number and sophistication of the investors securities registration may be necessary. In particular, the Company may need to register under the Investment Company Act of 1940 and failure to do so could have severe adverse consequences for the Company. Competent legal counsel must be consulted with respect to these matters.]

**[signatures follow on next page]**

IN WITNESS WHEREOF, the undersigned Members have executed this Agreement as of the date first above set forth.

**MANAGER:**

[Manager]

By: \_\_\_\_\_  
Name:  
Title:

**CLASS A MEMBERS:**

[For-Profit Investors]

By: \_\_\_\_\_  
Name:  
Title:

**CLASS PF MEMBERS:**

[Private Foundation Investor]

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

COMPANY SCHEDULE  
(as of [Date])

<u>NAME AND ADDRESS</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>	<u>CAPITAL ACCOUNT</u>	<u>MEMBERSHIP INTEREST</u>
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**CLASS A MEMBERS**

**CLASS PF MEMBERS**

**SCHEDULE B**

FORM OF JOINDER AGREEMENT

This JOINDER AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (this "Agreement"), is executed and delivered by \_\_\_\_\_ (the "New Member") in connection with the admission of the New Member as a member of [NAME] (the "Company") pursuant to the terms of the Operating Agreement of [NAME], dated as of [date] (as it may be amended from time to time in accordance with its terms, the "Company Agreement").

1. Effective as of the date first above written, the New Member hereby is admitted to the Company as a Member (as defined in the Company Agreement). The New Member hereby acknowledges and agrees that he/she/it is becoming a party to, and shall hereafter be bound by, all of the terms, obligations and other provisions of the Company Agreement as a result of his/her/its execution of this Agreement. Without limiting the generality of the foregoing, the New Member confirms that he/she/it hereby is making to the Company and to all of the other Members (as defined in the Company Agreement) the representations and warranties set forth in the Company Agreement.

2. The New Member hereby acknowledges that he/she/it has received a copy of the Company Agreement.

3. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Vermont.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above set forth.

**MANAGER:**

\_\_\_\_\_  
Name:  
Title:

**NEW MEMBER:**

\_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1**

DEFINITIONS

“Act” or “LLC Act” means the Vermont Limited Liability Company Act, 11 V.S.A. § 3001, et seq., as it may be amended from time to time, and any successor thereto.

“Adjusted Capital Account Deficit” means with respect to any Capital Account as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Person's Capital Account balance shall be determined in accordance with Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” 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.

“Agreement” has the meaning set forth in the preamble.

“Assumed Tax Rate” has the meaning given such term in Section 5.1(b) of the Agreement.

“Book Value” means, with respect to any Company property, the Company's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted (in the case of permitted adjustments, to the extent the Company makes such permitted adjustments) by Treasury Regulation Section 1.704-1(b)(2)(iv)(d) (g).

“Capital Account” has the meaning given such term in Section 4.5 of the Agreement.

“Capital Contributions” means any cash, cash equivalents, promissory obligations, or the Fair Market Value of other property which a Member contributes or is deemed to have contributed to the Company pursuant to Section 4.1.

“Class A Members” has the meaning set forth in the preamble and Section 3.1 of the Agreement.

“Class PF Members” has the meaning set forth in the preamble and Section 3.1 of the Agreement.

“Closing” has the meaning set forth in Section 8.3(a).

“Code” means the United States Internal Revenue Code of 1986, as amended, including any future amendments to the Code and any corresponding provisions of succeeding Code provisions (whether or not such amendments and corresponding provisions are mandatory or discretionary).

“Company” has the meaning set forth in the preamble.

“Company Income Account” has the meaning given such term in Section 5.1(b) of the Agreement.

“Company Minimum Gain” means the partnership minimum gain determined pursuant to Treasury Regulation Section 1.704-2(d).

“Company Schedule” has the meaning given such term in Section 3.3 of the Agreement.

“Costs” has the meaning set forth in Section 11.1 of this Agreement.

“Distribution” means each distribution made by the Company to a Member with respect to such Person’s Membership Interest, whether in cash, property or securities of the Company and whether by liquidating distribution, dividend or otherwise; provided that Distributions shall not include any recapitalization or exchange of securities of the Company (whether resulting from the conversion of the Company from a limited liability company to a corporation or otherwise), any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units.

“Event of Withdrawal” means the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company.

“Exercise Notice” has the meaning set forth in Section 7.3 of the Agreement.

“Excise Tax Costs” has the meaning set forth in Section 11.1 of this Agreement.

“Fair Market Value” means, when used with reference to the Company, the net fair market value of the Company as of the date immediately prior to the relevant event requiring a determination of the fair market value of the Company, as determined in good faith by the Manager in the Manager’s commercially reasonable discretion. Furthermore, the Manager shall determine the Fair Market Value of any particular non-cash assets of the Company and any Membership Interests in the Company in the Manager’s commercially reasonable discretion by determining the amount that (i) in the case of any non-cash asset of the Company, would be paid for such asset or (ii) in the case of any Membership Interest, would be distributed to the Member holding such Membership Interest (in such Person’s capacity as a Member and not as a creditor) as if all the assets of the Company were sold for an amount of cash equal to the fair market value of the Company and the proceeds were distributed in liquidation of the Company in accordance with this Agreement. In making the determination of Fair Market Value, the Manager shall assume the following: (i) with respect to any non-cash asset of the Company, that the fair market of such asset is equal to the net amount that would be paid in cash for such asset by an unaffiliated third party financial buyer after taking into account all liabilities to which such asset is subject, and (ii) with respect to the Company, that the net fair market value of the Company is equal to the amount which would be paid in cash for the Company, as a going concern, by an unaffiliated third party financial buyer, after taking into account liabilities of the Company. In addition, the Manager may take into account such additional factors as the Manager may deem relevant to such determination, including the event requiring the determination of Fair Market Value.

“Failure to Cure Notice” has the meaning given such term in Section 8.3(a) of the Agreement.

“Fiscal Period” means any interim accounting period within a Taxable Year established by the Board and which is permitted or required by the Code.

“Fiscal Year” means the Company’s annual accounting period established pursuant to Section 2.7.

“Indemnified Party” has the meaning set forth in Section 11.1 of the Agreement.

“Initial Capital Contributions” has the meaning set forth in Section 4.1 of the Agreement.

“IRS” means the United States Internal Revenue Service.

“Majority Vote” has the meaning given such term in Section 6.4(c) of the Agreement.

“Member” means, as referred to in the preamble and elsewhere in this Agreement, each of the Persons listed on the signature pages hereto as Members and each Person who is admitted to the Company as a Member pursuant to Section 3.4 or Article 7, in each case so long as such Person continuously holds a Membership Interest.

“Membership Interest” means a Member's interest, expressed as a percentage, in the Profits, Losses and Distributions of the Company representing a fractional part of the aggregate interests in the Profits, Losses, and Distributions of the Company of all Members and shall include all classes of Membership Interests; provided that each holder of any class of Membership Interest shall have the relative rights, powers, duties, and obligations specified with respect to such class of Members in this Agreement.

“New Member” means a Person admitted to the Company as a Member pursuant to Section 3.4.

“Non-Selling Members” has the meaning given such term in Section 7.2 of the Agreement.

“Offeree” has the meaning given such term in Section 7.2 of the Agreement.

“Officers” has the meaning given such term in Section 6.2 of the Agreement.

“Option” has the meaning given such term in Section 7.3 of the Agreement.

“Option Period” has the meaning given such term in Section 7.3 of the Agreement.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, business organization, entity or governmental entity (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

“PRI” means a program related investment as defined in Section 4944(c) of the Code and Treasury Regulations thereunder.

“PF Indemnified Party” has the meaning set forth in Section 11.1 of the Agreement.

“PF Member” means any Member of the Company that is a private foundation within the meaning of Code Section 509(a).

“Proceeding” has the meaning set forth in Section 11.1 of the Agreement.

“Profits” and “Losses.” The Company's taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable

income or loss); provided, such Profits and Losses will be computed as if items of tax-exempt income and nondeductible, noncapital expenditures (under Code Section 705(a)(1)(B) and 705(a)(2)(B)) were included in the computation of taxable income or loss. If any Member contributes property to the Company with an initial book value to the Company different from its adjusted basis for federal income tax purposes to the Company, or if Company property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations or as otherwise required by the Treasury Regulations, Profits and Losses will be computed as if the initial adjusted basis for federal income tax purposes to the Company of such contributed or revalued property equaled its initial Book Value to the Company as of the date of contribution or revaluation. Credits or debits to Capital Accounts due to a revaluation of Company assets in accordance with Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, or due to a distribution of noncash assets, will be taken into account as gain or loss from the disposition of such assets for purposes of determining Profits and Losses.

“Redemption Election” has the meaning set forth in Section 8.3 of the Agreement.

“Redemption Notice” has the meaning set forth in Section 8.2 of the Agreement.

“Redemption Price” means with respect to a Class PF Member’s Membership Interest the greater of (i) the Fair Market Value of such Class PF Member’s Membership Interest as of the close of business of the day immediately prior to the date of the Redemption Notice or (ii) the Class PF Member’s Unreturned Capital as of the close of business of the day immediately prior to the date of the Redemption Notice.

“Regulatory Allocations” has the meaning given such term in Section 5.3(d) of the Agreement.

“Securities Act” means the Securities Act of 1933, as amended, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“Securities Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“Selling Members” has the meaning given such term in Section 7.2 of the Agreement.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association or business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, either (A) a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof or (B) such Person is a general partner, managing member or managing director of such partnership, limited liability company, or other business entity. For purposes hereof and unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company.

“Taxable Year” means the Company’s accounting period for federal income tax purposes which shall be the Company’s Fiscal Year unless otherwise determined by the Managers.

“Tax Distribution” has the meaning given such term in Section 5.1(b) of the Agreement.

“Tax Matters Partner” has the meaning given such term in Section 10.4 of the Agreement.

“Transfer” has the meaning given such term in Section 7.1 of the Agreement.

“Transferring Interests” has the meaning given such term in Section 7.2 of the Agreement.

“Transfer Notice” has the meaning given such term in Section 7.2 of the Agreement.

“Treasury Regulations” means the income tax regulations promulgated under the Code and effective as of the date hereof. Such term shall, at the Board's sole discretion, be deemed to include any future amendments to such regulations and any corresponding provisions of succeeding regulations (whether or not such amendments and corresponding provisions are mandatory or discretionary).

“Unreturned Capital” of any Unit means, as of any date of determination, an amount equal to the excess, if any, of (a) the Capital Contribution made or deemed made in exchange for or on account of such Membership Interest, over (b) all Distributions made by the Company with respect to such Membership Interest pursuant to Section 5.1(a)(i) and (ii).

Contact: [robert.lang@americansforcommunitydevelopment.org](mailto:robert.lang@americansforcommunitydevelopment.org)  
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P.O. Box 236 • Granite Springs, NY 10527 • 914.248.8443  
[Americansforcommunitydevelopment.org](http://Americansforcommunitydevelopment.org)