

THIS SAMPLE OPERATING AGREEMENT WAS DERIVED FROM A SPECIFIC AGREEMENT FOR AN L3C INTO WHICH A FOUNDATION MADE A SIGNIFICANT PRI INVESTMENT. THIS AGREEMENT IS PROVIDED FOR EDUCATIONAL PURPOSES ONLY. YOU SHOULD CONSULT LEGAL COUNSEL IF YOU WANT TO USE ANY PORTION OF THIS SAMPLE AGREEMENT TO ENSURE IT MEETS YOUR NEEDS AND COMPLIES WITH ALL STATE AND FEDERAL REGULATIONS. SIGNIFICANT PORTIONS OF THIS AGREEMENT CONSIST OF WHAT IS COMMONLY KNOWN AS BOILERPLATE AND SHOULD NOT BE ALTERED WITHOUT LEGAL ADVICE.

LOW-PROFIT LIMITED LIABILITY COMPANY
OPERATING AGREEMENT
OF
[NAME],
a Vermont low-profit limited liability company

[Note: This Agreement was written 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]

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. Legal counsel should be consulted.]

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[Note: As L3Cs are a relatively new legal form it may be advisable to include a preamble section before the actual agreement that states the concept behind your L3C and gives a brief explanation of your expectations. 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 LOW-PROFIT 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 B Members (collectively referred to herein as the "Members").

**ARTICLE 1
FORMATION; QUALIFICATION**

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.

**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. The proposed purposes of the Company are as follows:

- (a) To [REDACTED];
- (b) To [REDACTED]; and

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(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 Low-Profit Limited Liability Company. 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:

(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).

If the Company at any time ceases to satisfy any one of the requirements, the Company shall immediately cease to be an L3C, but by continuing to meet all the other requirements of this Act, will continue to exist as a limited liability company; provided, however, that the name of the Company must be changed to be in conformance with Section 3005(a) of the LLC Act.

Section 2.4 Term. The Company shall continue until dissolved pursuant to this Agreement. Neither the Bankruptcy of a Member, nor the separation of a Member, whether by reason of death, 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 principal office shall be located at [address]. The Manager may change the 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.

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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.

ARTICLE 3 **MEMBERS; MEMBERSHIP**

[Note: This agreement does not provide for tranching returns on investments. Where distributions will be made to different classes of members, tranches may be advisable.]

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

(a) "Class A Members," which shall be composed solely of any private foundation investors making a program related investment ("PRI") in the Company under Section 4944(c) of the Code; and

(b) "Class B Members," which shall be composed of all other investors.

[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 such interest in the Company as shall be set forth on the Company Schedule hereto (each a "Membership Interest").

Section 3.3 Company Schedule. The name, address, Membership Interest 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 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 each class of 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 Member and the Manager, on behalf of the Company. 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.

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Section 3.5 Voting Rights. Each Member shall have one vote on any matter that is submitted to the Members for approval. [Note: May want to consider varying voting rights.]

Section 3.6 Investment Representations.

(a) Each Member represents and warrants that (i) such Member is acquiring his or her ownership interest in the Company for such Member's own account for investment, (ii) such Member has no intention of selling, distributing or otherwise disposing of all or any part of such ownership interest except in accordance with Article 7 and (iii) no law of any country other than the United States, nor any states' securities laws other than the laws of the state of such Member's address listed on the Company Schedule, apply to this investment by virtue of the Member's residence, principal place of business, jurisdiction of organization or any other aspect of this transaction.

(b) Each Member further represents and warrants that such Member has full authority to become a Member in the Company and to make the contributions reflected on the Company Schedule, that such Member has full authority and capacity to enter into this Agreement and that such Member's primary residential or business address, as applicable, is as set forth on the Company Schedule.

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 ("Capital Contributions").

Section 4.2 Additional Contributions. No Member is obligated to make any additional 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 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.

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Section 4.5 Maintenance of Capital Accounts. A capital account ("Capital Account") for each Member must be determined and maintained on the books and records of the Company in accordance with Section 704(b) of the Code, and the Treasury Regulations thereunder.

ARTICLE 5 DISTRIBUTIONS AND ALLOCATIONS OF INCOME AND LOSS

[Note: This agreement does not provide for tranching returns on investments. Where distributions will be made to different classes of members, tranches may be advisable.]

[Note: This 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 also be a disregarded entity or 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, and legal counsel should be consulted when making any modification.]

Section 5.1 Distributions in General. The Company may make distributions to the Members at any time and from time to time in such amounts as the Manager determines (a "Distribution"). (Note: May want to consider limiting distributions to Class A Members or prohibiting distributions during the initial start up phase.)

Section 5.2 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.

Section 5.3 Profits and Losses. Except as otherwise provided in Section 5.4, Profits and Losses for any fiscal year shall be allocated among the Members in accordance with their Membership Interests. "Profits" means items of Company income and gain determined in accordance with generally accepted accounting principles. "Losses" means items of Company loss and deduction determined in accordance with generally accepted accounting principles.

Section 5.4 Special Allocations.

(a) Nonrecourse deductions shall be allocated to the holders of Membership Interests (ratably among such Members based upon the number of outstanding Membership Interests held by each such Member). If there is a net decrease in the partnership minimum gain determined pursuant to Treasury Regulation Section 1.704-2(d) (the "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

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amount equal to such Members' 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 3.3(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 5.4(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 Members that unexpectedly receive an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has a Capital Account as of the end of any taxable year, the amount by which the balance in such Capital Account is less than zero determined in accordance with Treasury Regulation Section 1.704-1(b)(2)(ii)(d) ("Adjusted Capital Account Deficit") as of the end of any taxable year, then Profits for such taxable year shall be allocated to such Members in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.4(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 5.4(a), (b) and (c) above (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations under Section 704 of the Code. 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 Members if the Regulatory Allocations had not occurred.

(e) Profits and Losses described in Section 5.3 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 Sections 1272-1274, 7872, 483, 482, 83 or any similar provision now or hereafter in effect of the Code, and the Manager determines that any corresponding Profit or Loss of the Company should be

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allocated to the Member who recognized such item in order to reflect the Member's economic interests in the Company, then the Company may so allocate such Profit or Loss.

Section 5.5 Tax Allocations.

(a) Except as provided in Sections 5.4(b), (c) and (d) and this Section 5.5, 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 5.4 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 Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and 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) (the "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 Section 704(c) of the Code.

(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 5.5 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 Section 754 of the Code.

Section 5.6 Section 704(c) Covenants. As described in Treasury Regulation 1.704-3(c), the Company shall use the "traditional method" with "curative allocations" to make allocations of taxable income and loss among the Members with respect to any property contributed or deemed contributed to the

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Company by the Members. Furthermore, unless otherwise agreed in writing by the Members prior to any such event, the Company will not, for a period of five (5) years from the date of this Agreement, transfer or dispose of or permit or suffer the transfer or disposition of any assets of the Company, directly or indirectly, voluntarily or involuntarily, by operation of law, by foreclosure or otherwise (any such transfer or disposition being a "Disposition") unless the Company simultaneously pays the Members a Tax Distribution with respect to the Disposition. A Disposition shall include any event or occurrence in which income or gain is recognized pursuant to, or as a result of, Section 704(c) of the Code directly or indirectly by the Members in excess of the income or gain allocable directly or indirectly to the Members for book purposes under Section 704(b) of the Code in accordance with the applicable statutes, regulations, and rules in effect on the date of this Agreement, including, but not limited to any voluntary or involuntary sale (including a foreclosure or transfer in lieu of foreclosure), assignment, transfer, exchange, contribution, merger, consolidation, distribution or other disposition or conveyance of all or any portion of, or of all or any portion of any direct or indirect interest in, an asset of the Company.

ARTICLE 6 **MANAGEMENT**

Section 6.1 Appointment of Manager.

(a) The Members, by majority vote of all 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.

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 this sentence shall not limit the Manager's right to employ other Persons as provided in Section 6.3(c) below. 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:

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(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, and to pay such fees, expenses, salaries, wages or other compensation to such Person, 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

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

Section 6.4 Actions Requiring Member Vote.

(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:

(i) any merger or consolidation of the Company;

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(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 Section 8.2 [(whether ministerial or otherwise)] shall require an affirmative vote of all Class A Members;

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

(vi) [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].

(b) A meeting of the Members may be called by the Manager or by a majority of the Members at any time, 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

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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 a majority of the Members 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) Any action required or permitted to be taken at any meeting of the Members may be taken by a unanimous written consent without a meeting, without prior notice and without a vote.

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 cause, by a majority of the 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,

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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 Internal Revenue Service ("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.

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 and this Article 7, no Member may transfer, sell, assign, pledge, hypothecate, bequeath, give, create a security interest in or lien on, 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, no Member shall have the right to withdraw or resign from the Company, and any such withdrawal or resignation, whether pursuant to the power to withdraw under Section 3081(1) of the LLC Act or otherwise, 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.

(b) 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

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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 as determined by an independent appraiser unanimously selected by the Class A Members and the Selling Member; 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 Interests 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 five (5) 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

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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 A MEMBERS

Section 8.1 Reports. In connection with any Class A 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 10.3, such Class A 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 the Class A Member to comply with the requirements of Section 4945(h) of the Code) as such Class A Member shall reasonably request in writing to confirm that its investment has only 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 A Member.

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Section 8.2 Redemption. If at any time or from time to time (i) the Company shall fail to qualify as an L3C as defined in Section 3001(27) of the LLC Act, (ii) the Company shall fail to timely provide any reports or other documentation requested in accordance with Section 8.1 or Section 10.3, (iii) a New Member shall be admitted in accordance with Section 3.4 or (iv) the Company violates any provision of Section 2.3, a Class A Member may compel the Company to purchase and redeem its Membership Interests. The Class A Member shall send written notice to the Company of any desired redemption. The purchase price for the Membership Interests shall be equal to such Class A Member's unreturned Capital Contribution. [Payment of the purchase price may be made by promissory note executed by the Manager on behalf of the Company for a term of years to be negotiated (but not less than three (3) years) at the then prevailing applicable federal rate as set by the IRS for interest on notes of such term.]

ARTICLE 9 EXPULSION OF MEMBER

Section 9.1 Expulsion of Member. A Member may be expelled from the Company as follows:

(a) A Member may be expelled from the Company if in the sole discretion of the Manager such Member has undertaken any action that may impede the ability of the Company to fulfill its purposes as set forth in Section 2.2 or otherwise jeopardize the Company's ability to qualify as an L3C as set forth in Section 2.3, including without limitation voting against any action requiring a Member vote under Section 6.4(a) that the Manager believes is necessary or advisable to be undertaken in order to fulfill the Company's purposes as set forth in Section 2.2 or to protect the Company's ability to qualify as an L3C as set forth Section 2.3.

(b) A Member shall be automatically expelled from the Company without any further action by the Manager or any other Members if such Member (i) is convicted of a felony, (ii) files a petition for Bankruptcy or (iii) makes a general assignment for the benefit of creditors.

(c) Any expulsion of a Member in accordance with this Section 9.1 shall be final and shall not be subject to mediation, arbitration or review by any court of any jurisdiction and shall be effective on the date determined by the Manager.

Section 9.2 Effect of Expulsion.

(a) Except as set forth in this Section 9.2, upon a Member's expulsion from the Company (such Member or such Member's estate, upon the effectiveness of such termination, is referred to as a "Expelled Member"), the Expelled Member shall cease to be a Member, shall have no rights under this Agreement and shall have no authority, power or ownership with respect to the Company.

(b) The purchase price for the Membership Interests of the Expelled Member shall be equal to such Expelled Member's unreturned Capital Contribution. [Payment of the purchase price may be made by promissory note executed by the Manager on behalf of the Company for a term of years to be

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negotiated (but not less than three (3) years) at the then prevailing applicable federal rate as set by the IRS for interest on notes of such term.]

(c) A Member's right to transfer or liquidate the Member's interest is limited to the transfers specified in Article 7, and, except as provided for in this Article 9, the Company is not required to purchase a Member's interest in the case of a dissociating event that does not result in a dissolution under Section 12.1.

ARTICLE 10 **BOOKS, RECORDS AND ACCOUNTING**

Section 10.1 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 the [cash basis of accounting]. 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 10.2 Fiscal Year. The Company's fiscal year shall be the calendar year.

Section 10.3 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 A Member has an investment in the Company that is treated by such Class A 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.]

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 expenses, amounts paid in settlement, judgments, fines and penalties actually and reasonably incurred by or levied against such Indemnified Party 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"), (such amounts, including legal

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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). 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.

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 individual, corporation, general partnership, limited liability company, limited partnership, trust, proprietorship, firm, union, association or other business organization (a "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.

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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

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(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 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. Any of the following acts or events shall dissolve the Company:

(a) Unanimous written consent or affirmative vote of the Members to dissolve the Company in accordance with Section 6.4.

(b) 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.

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

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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 the amount of their positive Capital Accounts.

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.

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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 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 13.1 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 13.2 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 13.3 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 13.4 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"). The Members hereby appoint L3C Advisors L3C as the initial Tax Matters Partner of the Company.

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(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 14 **MISCELLANEOUS**

Section 14.1 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.

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Section 14.2 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 14.3 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 14.4 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 14.4 shall be the sole and exclusive remedies for resolving and remedying all Disputes hereunder.

Section 14.5 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 14.6 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 14.7 Capitalized Terms. All capitalized terms used in this Agreement shall have the meanings set forth in this Agreement.

Section 14.8 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 14.9 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.

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Section 14.10 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. This Agreement may be amended only by the consent of the Members in accordance with Section 6.4; provided, however, that Section 2.2, Section 2.3 or Section 8.2 may only be amended with an affirmative vote of each Class A Member.

Section 14.11 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 14.12 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 14.13 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 14.14 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.

[signatures follow on next page]

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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:

[Foundation]

By: _____
Name:
Title:

CLASS B MEMBERS:

[For-Profit Investor]

By: _____
Name:
Title:

SCHEDULE A

COMPANY SCHEDULE
(as of Date)

<u>NAME AND ADDRESS</u>	<u>CAPITAL ACCOUNT</u>	<u>MEMBERSHIP INTEREST</u>
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Class A Members

Class B Members

SAMPLE

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:

MEMBERS:

Name:
Title:

NEW MEMBER:

Name:
Title: