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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. AEQUITAS MANAGEMENT, LLC; AEQUITAS HOLDINGS, LLC;	No. 3:16-cv-00438-PK [*PROPOSED*] ORDER (1) AUTHORIZING AEQUITAS ETC FOUNDERS FUND TO CONSENT TO LOAN TO ETC GLOBAL GROUP, (2) AUTHORIZING RECEIVERSHIP ENTITIES TO (A) SELL SPECIAL MEMBER INTERESTS IN AEQUITAS ETC FOUNDERS FUND, (B)

AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT MANAGEMENT, LLC; ROBERT J. JESENIK, BRIAN A. OLIVER; and N. SCOTT GILLIS, Defendants.	RELEASE CLAIMS, (C) CONVERT AEQUITAS ETC FOUNDERS FUND'S EQUITY INTERESTS IN ETC GLOBAL GROUP, and (D) EXECUTE INSTRUMENTS TO EFFECTUATE LOAN TO ETC GLOBAL GROUP (3) APPROVING COMPROMISE OF MANAGEMENT FEES OWED BY AEQUITAS ETC FOUNDERS FUND TO AEQUITAS INVESTMENT MANAGEMENT, and (4) GRANTING RELATED RELIEF

This matter having come before the Honorable Paul Papak on the Receiver's Motions for an Order (1) Authorizing Aequitas ETC Founders Fund to Consent to Loan to ETC Global Group, (2) Authorizing Receivership Entities to (A) Sell Special Member Interest in Aequitas ETC Founders Fund, (B) Release Claims, (C) Convert Aequitas ETC Founders Fund's Equity Interests in ETC Global Group, and (D) Execute Instruments to Effectuate Loan to ETC Global Group, (3) Approving Compromise of Management Fees Owed by Aequitas ETC Founders Fund to Aequitas Investment Management, and (4) Granting Related Relief [Dkt. 482] (the "Motion"), and the Court, being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the Entity Defendants[1] and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed as receiver for the Entity Defendants and 43 related entities on an interim basis (the "Interim Receivership Order"). On April 14, 2016, pursuant to

[1] Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Order Appointing Receiver entered on April 14, 2016 (Dkt. 156) (the "Final Receivership Order") or the Motion, as applicable.

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the Final Receivership Order, the Receiver was appointed as receiver of the Entity Defendants and 43 related entities on a final basis.

C. Due, timely, and adequate notice of the Motion was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. It is in the best interests of the Receivership Entity, its creditors and investors to (1) authorize the Receiver, on behalf of Aequitas Investment Management, LLC ("AIM"), Aequitas Commercial Finance, LLC ("ACF"), and Aequitas ETC Founders Fund, LLC ("AEFF") (collectively the "Aequitas Entities"), to execute, deliver, and perform the ETC-AEFF Transaction, including execution and delivery of the ETC-AEFF Transaction Documents in substantially the same form attached as Exhibits 1-4, (2) authorize the Receiver to execute such other instruments and take such other actions as may reasonably be required to effectuate the ETC-AEFF Transaction, (3) authorize the sale of AIM's Special Member interests in AEFF to Aaron D. Maurer, (4) authorize the conversion of AEFF's equity interests in ETC Global Group, LLC ("ETC"), (5) approve the compromise of AIM's claim for Management Fees, and (6) approve the Release.

E. The terms and conditions of the ETC-AEFF Transaction, including but not limited to (1) the sale of AIM's Interest as the Special Member in AEFF, (2) the compromise of AIM's claim for Management Fees from AEFF, (3) the conversion of AEFF's Preferred Units to Class A-2 Units of ETC, and (4) the Release from AEFF in favor of ETC and certain affiliated parties, represent fair value for the Aequitas Entities and, in the exercise of the Receiver's business judgment, are in the best interests of the Receivership Entity, and its creditors and investors.

The Court having reviewed the Motion, the Declaration of Brad Foster, and being duly advised,

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IT IS HEREBY ORDERED AND DECREED as follows:

1. The Motion is granted in its entirety.

2. The Receiver, in his capacity as receiver for the Aequitas Entities, is authorized to execute, deliver, and perform the ETC-AEFF Transaction, including execution and delivery of the ETC-AEFF Transaction Documents in substantially the form attached as Exhibits 1-4, and is further authorized to execute such other instruments and take such other actions as may reasonably be required to effectuate the ETC-AEFF Transaction.

3. Without limiting the foregoing (a) the sale of AIM's Interest as the Special Member in AEFF, (b) the compromise of AIM's claim for Management Fees from AEFF, (c) the conversion of AEFF's Preferred Units to Class A-2 Units of ETC, (d) the conversion of AEFF's equity interests in ETC, and (e) the Release, are hereby authorized and approved.

4. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity, and their successors and assigns.

Dated this _____ day of _____, 2017.

_____
United States Magistrate Judge Paul Papak

SUBMITTED BY:

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

of

ETC GLOBAL GROUP LLC

Dated as of July [_], 2017

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Amended and Restated Limited Liability Company Operating Agreement

of

ETC GLOBAL GROUP LLC

This Amended and Restated Limited Liability Company Operating Agreement (this "Agreement") of ETC Global Group LLC (the "Company"), a Delaware limited liability company, is made and entered into and shall be effective as of July [__], 2017 (the "Effective Date") among the Members of the Company, the Warrant Holders and each other Person who may hereafter be admitted as a Member in accordance with the terms of this Agreement and the Act (as defined below) (collectively, the "Parties").

WHEREAS, on February 6, 2014, the Company was formed by the filing of its certificate of formation with the Secretary of State of the State of Delaware and the Members executed that certain Limited Liability Company Agreement of the Company, dated as of November 27, 2013 (the "Original Agreement");

WHEREAS, on the date hereof, the Company and certain of its Subsidiaries have entered into the Financing Agreement and in connection therewith, issued the Warrants to the Warrant Holders;

WHEREAS, Section 11.08 of the Original Agreement provides, among other things, that any amendments to the Original Agreement need to approved by the Board of Managers and by 67% of the Members (acting on an as converted basis);

WHEREAS, as of the Effective Date, each Former Preferred Unit shall be converted into one Class A-2 Unit and each Former Common Unit shall be converted into one Class A-3 Unit;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the Parties hereby agree that the Original Agreement is hereby amended and restated in its entirety and further agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATIVE MATTERS

1.1 Definitions. For purposes of this Agreement unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Acquisition" means any transaction in which the Company or any Subsidiary purchases or otherwise acquires assets from another Person that is not a wholly owned Subsidiary, including by way of a merger, consolidation or other similar business combination.

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. Sections 18-101 et seq.

"Additional Member" means any Person that has been admitted to the Company as a Member after the Effective Date pursuant to Section 3.4 by virtue of having received Units from the Company and not from any other Member.

"AFF" means Aequitas ETC Founder's Fund.

"Affiliate" shall mean with respect to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person, and with respect to any individual, shall mean his or her spouse, sibling, child, step child, grandchild, or parent of such Person, or the spouse thereof ("Immediate Family"), or the heirs, executors, testamentary administrators, testamentary trustees, testamentary legatees or testamentary beneficiaries of any such Person or any member of their Immediate Family or a trust or family limited partnership for the benefit of such Person or Persons, and, with respect to a corporation, limited liability company or partnership, shall also mean its respective members, stockholders, general partners and/or limited partners, as applicable. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agreement" means this Amended and Restated Limited Liability Company Operating Agreement, as originally executed and as amended from time to time, as the context requires.

"Applicable Law" means, for any Person, any domestic or foreign law, rule or regulation, or judgment, decree, order, permit, license, certificate of authority, order or governmental approval, in each case, of or by any Governmental Entity, to which the Person or any of its business is subject.

"Asset Sale" means (a) the sale, lease, conveyance or other disposition of (i) all or substantially all of the assets, rights or properties of the Company and its Subsidiaries, taken as a whole, or (ii) any asset or assets of the Company or any of its Subsidiaries having a sale price (or, if not sold for all cash, a Fair Market Value) in excess of $15,000,000, and (b) the sale of any Capital Stock of any Subsidiaries of the Company by stock sale, merger, consolidation or otherwise, in the case of either clause (a) or (b), whether in a single transaction or a series of related transactions; provided, however, that no such sale, lease, conveyance or disposition between the Company and any of its wholly owned Subsidiaries or between such wholly owned Subsidiaries shall be deemed to be an Asset Sale.

"Applicable Tax Rate" means the highest combined federal, state and local marginal income tax rate imposed for a Fiscal Year on the income of any Member or its direct or indirect owners (taking into account (a) the deductibility of state and local income taxes for U.S. federal income tax purposes, and (b) the character (e.g., long-term or short-term capital gain, ordinary or exempt) of the applicable income).

"Available Cash" means the gross cash proceeds of the Company from all sources less all amounts used to pay or establish reserves for all Company expenses, all as determined by the Board of Managers. "Available Cash" shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.

"Blocker Entity" means any Person created by Cerberus or any of its Affiliates for the purposes of holding, directly or indirectly, any interest in the Company or any of its Subsidiaries, including without limitation, ETC Equity Holder LLC and ETC IP Participant LLC, whose sole asset shall be its interest in the Company.

"Board of Managers" has the meaning set forth in Section 7.1(a).

"Book Value" means, with respect to any Company asset, such asset's adjusted basis for U.S. federal income tax purposes, except that (i) the initial Book Value of any asset contributed to the Company shall be equal to its gross Fair Market Value at the time of the contribution and (ii) the Book Values of all Company assets may be adjusted to equal their respective Fair Market Values, as determined by Board of Managers, in accordance with the rules set forth in Regulations Section 1.704-1(b)(2)(iv)(f) (except as otherwise provided herein) immediately prior to: (a) the date of the distribution of more than a de minimis amount of Company property (other than a pro rata distribution) to a Member in exchange for all or a part of such Member's Interest in the Company; or (b) such other dates as may be specified in Regulations promulgated under Section 704 of the Code; provided that adjustments pursuant to clauses (a) or (b) above shall be made only if the Board of Managers determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. The Book Value of any Company asset distributed to any Member shall be adjusted immediately prior to such distribution to equal its Fair Market Value. In the case of any asset that has a Book Value that differs from its adjusted tax basis, Book Value shall be adjusted by the amount of depreciation calculated for purposes of the definition of "Net Profits and Net Losses" rather than the amount of depreciation determined for U.S. federal income tax purposes.

"Business Day" means each day of the calendar year other than days on which banks are required or authorized to close in New York.

"Capital Account" means the account maintained for a Member determined in accordance with Article III.

"Capital Stock" means (a) in the case of a corporation, corporate stock; (b) in the case of an association or business entity, any and all shares, equity, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); (d) any interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; and (e) any other interest convertible into or exchangeable for, or carrying rights or options to purchase any of the interests listed in (a), (b), (c) or (d) above.

"Capital Contribution" means, with respect to each Member, any cash or cash equivalents or other property that a Member contributes to the Company in exchange for or otherwise in respect of any Units or other Equity Securities issued pursuant to Article III (net of any liabilities assumed by the Company or to which such property is subject), as set forth on Schedule A or Schedule B, as each may be modified or supplemented from time to time pursuant to Sections 3.3 and 3.4.

"Cerberus" means ETC Equity Holder LLC and its Permitted Transferees (or any other Person to which a Cerberus Warrant is transferred in accordance with the terms hereof).

"Cerberus Breach Adjustment" has the meaning set forth in Section 3.12(b).

"Cerberus Warrant Adjustment" means that adjustment, if any, to the Warrant Securities and/or Warrant Exercised Securities held by Cerberus, which will be effected on the date that is six months following the third anniversary of the date hereof, calculated based on the nearest achieved EBITDA Threshold (as defined in the Warrants) corresponding to the actual realized EBITDA of the Company and its Subsidiaries (rounded to the last $100,000 and calculated to Cerberus's and Quantlab's good faith reasonable satisfaction and on a last 12 month basis as of the third anniversary of the date hereof) and which shall be sustained over the next six months following such date (and if such threshold is not sustained, then the Cerberus Warrant Adjustment will be based upon the actual and sustained EBITDA (calculated on an annualized basis) as demonstrated over such additional six-month period); provided that if a Cerberus Warrant has not been exercised (or has been partially exercised), the adjustment shall first be made to the number of Warrant Securities held by Cerberus and then if necessary, to the number of Warrant Exercised Securities held by Cerberus. For purposes of calculating the Cerberus Warrant Adjustment, if the actual realized EBITDA of the Company and its Subsidiaries (calculated as provided hereunder) is between two EBITDA Thresholds, the amount of the Cerberus Warrant Adjustment shall be based on a linear interpolation between the applicable EBITDA Thresholds.

"Cerberus Warrant" means that certain warrant to acquire, in the aggregate, Class A-1 Units representing 53.04% of the Fully Diluted Aggregate Interest, as may be adjusted in accordance with the terms thereof, dated as of the date hereof, issued by the Company to Cerberus.

"Certificate of Formation" means the document filed with the Secretary of State of Delaware on February 6, 2014 and through which the Company was formed and any duly authorized, executed and filed amendments or restatements thereof.

"Class A Members" means the holders of the Class A Units.

"Class A-1 Members" means the holders of the Class A-1 Units.

"Class A-2 Members" means the holders of the Class A-2 Units.

"Class A-3 Members" means the holders of the Class A-3 Units.

"Class A Units" means the Units designated as Class A Units (whether Class A-1 Units, Class A-2 Units or Class A-3 Units) pursuant to Section 3.1

"Class A-1 Units" means the series of Class A Units designated as Class A-1 Units pursuant to Section 3.1.

"Class A-2 Units" means the series of Class A Units designated as Class A-2 Units pursuant to Section 3.1.

"Class A-3 Units" means the series of Class A Units designated as Class A-3 Units pursuant to Section 3.1.

"Class B Incentive Units" means the Units designated as Class B Incentive pursuant to Section 3.1.

"Class B Members" means the holders of the Class B Incentive Units.

"Cloyd Industries" means Cloyd Industries LLC and Cloyd Partners Inc.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"Company" has the meaning set forth in the preamble hereto.

"Company Financial Advisor Warrant" means that warrant to acquire, in the aggregate, Class A-1 Units representing 3% of the Fully Diluted Aggregate Interest, as may be adjusted in accordance with the terms thereof, dated as of the date hereof, issued by the Company to Virtus Holding Ltd.

"Company Minimum Gain" has the meaning set forth for the term "partnership minimum gain" in Regulations Section 1.704-2(b)(2) and 1.704-2(d).

"Company Representatives" means any of the Company' s Subsidiaries, managers, officers, employees, representatives, investment bankers, financial advisors, consultants, attorneys, accountants and other agents.

"Confidential Information" means all confidential and proprietary information (irrespective of the form of communication) obtained by or on behalf of, a Member or Warrant Holder from the Company or any Company Representative or through the ownership of Units or Warrant Securities, other than information which (i) was or becomes generally available to the public other than as a result of a breach of this Agreement by such Member, Warrant Holder or any of their respective Representatives (as defined below), (ii) was or becomes available to such Member or Warrant Holder on a nonconfidential basis prior to disclosure to the Member or Warrant Holder by the Company or any Company Representative or through such Member's or Warrant Holder's ownership of Units or Warrant Securities, (iii) was or becomes available to the Member or Warrant Holder from a source other than the Company or any Company Representative or through such Member's or Warrant Holder's ownership of Units or Warrant Securities in the Company; provided that such source is not known by such Member or Warrant

Holder to be bound by a confidentiality agreement with the Company, or (iv) is or was independently developed by such Member or Warrant Holder without the use of any such information received under this Agreement. Confidential Information also includes, subject to the foregoing exclusions, all understandings, agreements and other arrangements between and among the Members or Warrant Holders, and all other non-public information received from, or otherwise relating to the Company, any of its Subsidiaries or any Member or Warrant Holder or any other investor in any of the foregoing.

"Conversion" means the conversion of Former Preferred Units and Former Common Units into Class A Units pursuant to Section 3.1(b).

"Co-Sale Notice" has the meaning set forth in Section 8.3(a).

"Co-Sale Participant" has the meaning set forth in Section 8.3(a).

"Co-Sale Unit" has the meaning set forth in Section 8.3(a).

"Covered Person" means a current or former Member or Manager, an Affiliate of a current or former Member or Manager, or any officer, director, shareholder, partner, member, employee, representative or agent of a current or former Member or Manager or any of their respective Affiliates.

"Distribution" means a transfer of cash, securities or other property to a Member as described in Article IV or Article XI.

"Drag Along Member" has the meaning set forth in Section 8.4.

"EBITDA" means "Consolidated EBITDA", as such term is defined in the Financing Agreement.

"Effective Date" has the meaning set forth in the preamble hereto.

"Equity Securities" has the meaning set forth in Section 3.8(a).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Existing Member" means any Member hereunder that was a "Member" pursuant to the Original Agreement.

"Fair Market Value" means, as of the date of determination, (i) with respect to any cash, the amount thereof in U.S. dollars as of such date, (ii) with respect to any security that is listed on a U.S. national securities exchange, the average of the closing prices per share of such security as reported on such exchange for each of the ten (10) trading days immediately prior to such date, and (iii) with respect to any other property, the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined by the Board of Managers or the Independent Appraiser, as applicable.

"Financing Agreement" means that Financing Agreement dated as of the date hereof, by and among the Company, each Subsidiary of the Company listed as a "Guarantor" on the signature pages thereto, the lenders from time to time party thereto and Cerberus (or an Affiliate thereof), as collateral agent and administrative agent for such lenders.

"Fiscal Year" means the fiscal year of the Company, as determined by the Board of Managers.

"Former Common Units" means "Common Units" as defined in the Original Agreement, immediately prior to the date hereof.

"Former Preferred Units" means "Preferred Units" as defined in the Original Agreement, immediately prior to the date hereof.

"Fully Diluted Aggregate Interest" means, at the relevant time, the total aggregate number of Units held by Members at such time (other than Class B Incentive Units) plus the total aggregate number of Units (other than Class B Incentive Units) that would be issued pursuant to any right, then outstanding, to acquire Units or other Interests in the Company, including pursuant to any Warrant Security.

"Fully Diluted Interest" means, at the relevant time and with respect to a Member or Warrant Holder, the total number of Units held by such Member at such time (other than Class B Incentive Units) plus the total number of Units (other than Class B Incentive Units) that would be issued pursuant to any right, then outstanding, to acquire Units or other Interest in the Company, including pursuant to any Warrant Security, then held by such Member.

"Fully Diluted Interest Percentage" means, at the relevant time and with respect to a Member or Warrant Holder, the ratio, expressed as a percentage, of the Fully Diluted Interest of such Member compared to the Fully Diluted Aggregate Interest.

"GAAP" means accounting principles generally accepted in the United States of America as in effect from time to time, consistently applied and maintained throughout the applicable periods both as to classification or items and amounts.

"Governmental Entity" means the United States of America or any other nation, any state, province or other political subdivision, any international or supra-national entity, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, including any court, in each case having jurisdiction over the Company or any of the property or other assets of the Company.

"Incentive Cap" means 55,729,052 Units.

"Independent Appraiser" means any of the third party appraisers set forth on Exhibit A hereto.

"Indebtedness" means indebtedness for borrowed money.

"Intercreditor Agreement" means that Intercreditor and Subordination Agreement, dated as of July [●], 2017, by and between Cerberus Institutional Partners VI, L.P., Quantlab Investments, LLC, AVG Holdings LP and Southport Investments, LP, as may be amended or supplemented from time to time.

"Interests" means the limited liability company interest owned by a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all terms and provisions of this Agreement. All Interests shall be represented by Units.

"Investor Members" means the holders of the Cerberus Warrant and the Quantlab Warrant and/or if applicable, the Warrant Exercised Securities as a result of the exercise of the Cerberus Warrant and/or the Quantlab Warrant and their Permitted Transferees.

"Investor Units" means the Units held by the Investor Members.

"Investor Warrant Holders" means any Person who holds a Quantlab Warrant or a Cerberus Warrant.

"IPO" means the first public offering of common stock of the Company or any of its Subsidiaries (or any successor thereto formed for the purpose of pursuing an initial public offering) pursuant to a registration statement filed with and declared effective by the SEC either (x) resulting in proceeds of at least $50,000,000 or (y) approved by the Board of Managers.

"Joinder" has the meaning set forth in Section 3.4(b).

"Lender Manager" has the meaning set forth in Section 7.1(c).

"Loan" means that certain revolving loan from Cerberus (or an Affiliate of Cerberus) and certain other lenders to the Company in the approximate aggregate principal amount of up to Sixty Three Million Dollars ($63,000,000), as may be increased or decreased from time to time in accordance with the terms of the Financing Agreement governing the Loan.

"Manager" means a member of the Board of Managers.

"Marketable Securities" means any capital stock, bonds, notes, debentures, trust receipts, partnership interests, instruments or evidences of indebtedness commonly referred to as securities, warrants or options that (a) are of a class listed or quoted for trading on one or more national securities exchanges on such date and (b) either (i) have been registered under the Securities Act (as defined below) for issuance to the Members or (ii) are subject to registration rights reasonably satisfactory to the Board of Managers.

"Member Nonrecourse Debt Minimum Gain" means an amount with respect to each partner nonrecourse debt (as defined in Regulations Section 1.704-2(b)(4)) equal to the Company Minimum Gain that would result if such partner nonrecourse debt were treated as a nonrecourse liability (as defined in Regulations Section 1.752-1(a)(2)) determined in accordance with Regulations Section 1.704-2(i)(3).

"Member Nonrecourse Deductions" has the meaning set forth for the term "partner nonrecourse deduction" in Regulations Section 1.704-2(i)(2).

"Members" means the Class A Members and the Class B Members. The Members shall constitute the "members" (as such term is defined in the Act) of the Company.

"Minority Members" means all of the Class A-2 Members and Class A-3 Members.

"Net Profits" and "Net Loss" means, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) items of income, gain, loss and deduction shall be computed based upon the Book Values of the assets of the Company rather than upon the assets' adjusted tax bases for U.S. federal income tax purposes;

(ii) any income of the Company that is exempt from federal income tax not otherwise taken into account in computing Net Profits or Net Loss shall be added to such taxable income or loss;

(iii) in the event the Book Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of "Book Value," the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(iv) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Loss shall be subtracted from such taxable income or loss.

"Nonrecourse Deductions" has the meaning set forth for such term in Regulations Section 1.704-2(b).

"Officers" has the meaning set forth in Section 7.2(h).

"Original Agreement" has the meaning set forth in the recitals hereto.

"PDQ" means PDQ Enterprises, LLC, or its Permitted Transferees.

"PDQ Exchange" has the meaning set forth in Section 3.11.

"PDQ Warrant" means that certain warrant issued to PDQ to acquire, in the aggregate, Class A-1 Units representing 3.88% of the Fully Diluted Aggregate Interest, as may be adjusted or exchanged in accordance with the terms thereof.

"Percentage Interest" means, expressed as a percentage, with respect to any Member, the number of Units held by the such Member divided by the aggregate number of outstanding Units held by all Members (whether vested or unvested).

"Permitted Business" means the lines of business conducted by the Company or any of their respective Subsidiaries on the date hereof and any business incidental thereto as determined in good faith by the Board of Managers.

"Permitted Quantlab Warrant Sale" means a sale of Warrant Securities by Quantlab, in one or more transactions, with an aggregate purchase price paid not to exceed Four Million Dollars ($4,000,000) in the aggregate; provided that such sale(s) shall not be to any Person that engages in any activity that is competitive to the business of the Company and its Subsidiaries and in no event shall such sale include Warrant Securities that represent in excess 8% of the Fully Diluted Aggregate Interest.

"Permitted Transferee" means with respect to any Member or Warrant Holder, an Affiliate of such Member or Warrant Holder.

"Person" means any individual, firm, partnership, corporation, trust, joint venture, association, joint stock company, limited liability company, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof, and shall include any successor (by merger or otherwise) of such entity.

"Preemptive Securities" has the meaning set forth in Section 3.8(a).

"Proceeding" means any administrative, judicial, or adversary proceeding, including litigation, arbitration, administrative adjudication, mediation, and appeal or review of any of the foregoing.

"Qualifying Acquisition" means any Acquisition of a Person or business (other than from an Affiliate of any Member or Warrant Holder) where the purchase price of such Person or business and the Fair Market Value of any other property transferred to the Company or any Subsidiary in connection with such Acquisition represents less than an amount that is equal to the product (x) such Person's or business's EBITDA (calculated on a post-synergy basis as presented to the Board of Managers and based on the advice of a reputable third-party advisor engaged by the Board of Managers) multiplied by (y) five and a half (5.5); provided that the purchase price of such Person or business and any other property transferred to the Company or any Subsidiary in connection with such Acquisition shall not exceed the greater of (a) 75% of the product of (i) the EBITDA of the Company at the time of such Acquisition (calculated on a last twelve months basis) multiplied by (ii) ten (10) and (b) $20,000,000.

"Quantlab" means, collectively (acting as one) Quantlab Investments, LLC, AVG Holdings LLC and Southport Investments, LLC and/or their Permitted Transferees (or any other Person to which a Quantlab Warrant is transferred in accordance with the terms hereof).

"Quantlab Breach Adjustment" has the meaning set forth in Section 3.13(a).

"Quantlab Buy-out Transaction" means any Transfer of Units or Warrant Securities by Cerberus or any other Senior Lender to Quantlab or any other Subordinated Lender in connection with the exercise by Quantlab and/or such other Subordinated Lenders of the option to purchase all of the Fully Diluted Interest of Cerberus and any other Senior Lender pursuant to Section 11 of the Intercreditor Agreement (or any successor provision thereto) in accordance with the terms and conditions thereof.

"Quantlab Entity" means any of Quantlab Investments, LLC, AVG Holdings LLC and Southport Investments, LLC and/or their Permitted Transferees (or any other Person to which a Quantlab Warrant is transferred in accordance with the terms hereof)

"Quantlab Warrant" means those certain warrants to acquire, in the aggregate, Class A-1 Units representing 38.15% of the Fully Diluted Aggregate Interest, as may be adjusted in accordance with the terms thereof, dated as of the date hereof, issued by the Company to Quantlab.

"Quantlab Warrant Adjustment" means that adjustment, if any, to the Warrant Securities and/or Warrant Exercised Securities held by any Quantlab Entity, which will be effected on the date that is six months following the third anniversary of the date hereof, calculated based on the nearest achieved EBITDA Threshold (as defined in the Warrants) corresponding to the actual realized EBITDA of the Company and its Subsidiaries (rounded to the last $100,000 and calculated to Quantlab's and Cerberus's good faith reasonable satisfaction and on a last 12 month basis as of the third anniversary of the date hereof) and which shall be sustained over the next six months following such date (and if such threshold is not sustained, then the Quantlab Warrant Adjustment will be based upon the actual and sustained EBITDA (calculated on an annualized basis) as demonstrated over such additional six-month period); provided that if a Quantlab Warrant has not been exercised (or has been partially exercised), the adjustment shall first be made to the number of Warrant Securities held by Quantlab and then if necessary, to the number of Warrant Exercised Securities held by Quantlab; provided, further, that the Quantlab Warrant Adjustment shall be calculated in the aggregate, with the Quantlab Warrant Adjustment ratably adjusting the number of Warrant Securities underlying each Quantlab Warrant. For purposes of calculating the Quantlab Warrant Adjustment, if the actual realized EBITDA of the Company and its Subsidiaries (calculated as provided hereunder) is between two EBITDA Thresholds, the amount of the Quantlab Warrant Adjustment shall be based on a linear interpolation between the applicable EBITDA Thresholds.

"Registered Sale" means a sale under an effective registration statement filed pursuant to the Securities Act.

"Regulations" means, except where the context indicates otherwise, the permanent and temporary regulations of the Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time (including corresponding provisions of succeeding regulations).

"Related Companies" has the meaning set forth in Section 7.4.

"Representatives" has the meaning set forth in Section 13.1.

"Sale Transaction" means the Transfer of Units and Warrant Securities to a Person (or group) that is not a Permitted Transferee, pursuant to which such Person (or group) shall acquire beneficial ownership of 100% of the then outstanding Units and the then existing Warrant Securities (whether by merger, consolidation or other Transfer of Units).

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Lender" has the meaning ascribed thereto in the Intercreditor Agreement.

"Subordinated Lender" has the meaning ascribed thereto in the Intercreditor Agreement.

"Subordinated Note" means that certain note entered into as of the date hereof whereby the Company promises to pay to the order of the Quantlab Entities any amount, the original principal sum of which is $31,450,000.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association, bank, savings bank, or other organization or business entity, whether incorporated or unincorporated, which is consolidated with such Person for financial reporting purposes under GAAP. For purposes hereof, references to a "Subsidiary" of any Person shall be given effect only at such times that such Person has one or more Subsidiaries and, unless otherwise indicated, the term "Subsidiary" refers to a Subsidiary of the Company.

"Satisfaction and Restatement of Indebtedness" means that agreement, dated as of the date hereof, by and among PDQ Enterprises, LLC and who its wholly owned subsidiary CODA Markets, Inc., Electronic Transaction Clearing, Inc. and the Company.

"Tax Matters Member" has the meaning set forth in Section 9.4.

"Transfer" means any sale, transfer, assignment (other than a contingent assignment for the benefit of creditors), exchange, conveyance or other transfer, alienation, lease, mortgage, pledge, encumbrance or hypothecation or other disposition of an interest (whether with or without consideration, whether voluntary or involuntary or by operation of law, whether directly or indirectly (including by transferring a majority of the interests in such Member or Warrant Holder or such Member's or Warrant Holder's parent entity)). The terms "Transferee," "Transferor," "Transferred," and other forms of the word "Transfer" shall have the correlative meanings.

"Transferring Holder" has the meaning set forth in Section 8.3(a).

"Unit" means a unit representing a fractional part of the Interests of all of the Members and shall include all types and classes and/or series of Units; provided, however, that any type or class or series of Unit shall have the designations, preferences and/or special rights set forth in this Agreement and the Interests represented by such type or class or series of Unit shall be determined in accordance with such designations, preferences and/or special rights.

"Warrant Exercised Security" means any Unit issued by the Company upon the exercise of a Warrant Security.

"Warrant Holder" means any Person who holds a Warrant.

"Warrants" means collectively, the Cerberus Warrant, the Quantlab Warrant, the Company Financial Advisor Warrant, the PDQ Warrant and any other warrant issued on the date hereof to a Person indicated as a Warrant Holder on the signature pages hereto.

"Warrant Security" means, with respect to any Warrant, the right to acquire a Units upon the exercise of such Warrant.

"1940 Act" has the meaning set forth in Section 5.2(g).

1.2 Interpretative Matters. In this Agreement, unless otherwise specified or where the context otherwise requires:

(a) the headings of particular provisions of this Agreement are inserted for convenience only and will not be construed as a part of this Agreement or serve as a limitation or expansion on the scope of any term or provision of this Agreement;

(b) words importing any gender shall include other genders;

(c) words importing the singular only shall include the plural and vice versa;

(d) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation";

(e) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement;

(f) references to "Articles," "Exhibits," "Sections" or "Schedules" shall be to Articles, Exhibits, Sections or Schedules of or to this Agreement;

(g) references to any Person include the heirs, executors, administrators, legal representatives, successors and permitted assigns of such Person where the context so permits;

(h) the use of the words "or," "either" and "any" shall not be exclusive;

(i) wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict;

(j) references to "$" mean the lawful currency of the United States of America;

(k) references to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder and such state or federal law, as amended, amended and restated, replaced, substituted, modified or supplemented from time to time, unless the context requires otherwise; and

(l) references to any agreement, contract, exhibit or schedule, unless otherwise stated, are to such agreement, contract, exhibit or schedule as amended, amended and restated, replaced, substituted, modified or supplemented from time to time in accordance with the terms hereof and thereof.

ARTICLE II

FORMATION

This Amended and Restated Limited Liability Company Operating Agreement of ETC Global Group LLC is entered into and shall be effective as of the date first above written by and among the Members and the Warrant Holders:

2.1 Organization. The Members and the Warrant Holders hereby enter into this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Act. This Agreement completely amends, restates and supersedes the Original Agreement.

2.2 Name. The name of the Company is "ETC Global Group LLC". All business conducted in the State of Delaware shall be conducted under such name. All business of the Company shall be conducted under that name or under any other name, but in any case, only to the extent permitted by Applicable Law.

2.3 Term. The term of the Company commenced upon the filing of the Certificate of Formation in accordance with the Act, and shall continue until the existence of the Company is terminated pursuant to Article XI.

2.4 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Certificate of Formation as filed in the office of the Secretary of State of Delaware. The Company may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State of Delaware. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Company shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be.

2.5 Principal Office. The principal office of the Company shall be located at 660 S Figueroa St #1430, Los Angeles, CA 90017, or at such other place as may be determined by the Board of Managers. The Company may also have such other offices as the Board of Managers may determine.

2.6 Purposes; Powers.

(a) The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which limited liability companies may be organized under the Act. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any

purpose or power, or to do any act or thing, forbidden by Applicable Law to a limited liability company organized under the laws of the State of Delaware.

(b) Subject to Section 7.7 and other applicable provisions of this Agreement and except as prohibited by Applicable Law, (i) the Company may, with the approval of the Board of Managers, enter into, deliver and perform any and all agreements, consents, deeds, contracts, proxies, covenants, bonds, checks, drafts, bills of exchange, notes, acceptances and endorsements, and all evidences of indebtedness and other documents, instruments or writings of any nature whatsoever, all without any further act, vote or approval of any Member, and (ii) the Board of Managers may authorize (including by general delegated authority) any Person (including any Member, Manager or Officer) to enter into, deliver and perform on behalf of the Company any and all agreements, consents, deeds, contracts, proxies, covenants, bonds, checks, drafts, bills of exchange, notes, acceptances and endorsements, and all evidences of indebtedness and other documents, instruments or writings of any nature whatsoever.

(c) The Company shall exist under and be governed by, and this Agreement shall be construed in accordance with, the Applicable Laws of the State of Delaware. The Board of Managers shall cause the Company to make all filings and disclosures required by, and shall otherwise cause the Company to comply with, all such laws. The Board of Managers shall cause an authorized person within the meaning of the Act to execute and file in the appropriate records any assumed or fictitious name certificates and other documents and instruments as may be necessary or appropriate with respect to the formation of, and conduct of business by, the Company.

(d) The Company shall (i) maintain its existence as a legal entity separate from the Members, Warrant Holders and any other Person; (ii) not commingle its assets with assets of any other Person and hold all of its assets in its own name; (iii) conduct its business and own its properties in its own name and comply in all material respects with organizational formalities to maintain its separate existence; (iv) correct any known misunderstanding regarding its separate identity; and (v) observe in all material respects the formalities required of a limited liability company under Delaware law.

2.7 Title to Property. All real and personal property owned by the Company shall be owned by the Company as an entity and no Member or Warrant Holder shall have any ownership interest in such property in its individual name or right, and each Member's interest, and Warrant Holder's right to acquire an interest, in the Company shall be deemed personal property for all purposes. The Company shall hold all of its real and personal property in the name of the Company and not in the name of any Member or Warrant Holder.

2.8 Payments of Individual Obligations. The Company's credit and assets shall be used solely for the benefit of the Company or its Subsidiaries, and no asset of the Company shall be transferred or encumbered for or in payment of any individual obligation of a Member or Warrant Holder.

2.9 Consent to Restatement and Reclassification. Each Existing Member hereby consents to and approves for all purposes under the Original Agreement and any other agreement such Existing Member has with the Company prior to the date hereof, the amendment and

restatement of the Original Agreement to this Agreement, the issuance of the Warrants and Conversion. Each Existing Member hereby waives, with respect to this amendment and restatement of the Original Agreement set forth in this Agreement, the issuance of the Warrants and the Conversion, any consent, notice, conversion, right of first refusal or preemptive rights, transfer restrictions, distributions rights, tag along rights, preference payments and any other agreement such Existing Member has with the Company prior to the date hereof.

ARTICLE III

CLASSES OF UNITS, CONTRIBUTIONS AND CAPITAL ACCOUNTS

3.1 Units; Conversion.

(a) The Interests shall be represented by issued and outstanding Units (which shall not initially be certificated although the Board of Managers may elect to do so), which may be divided into one or more types, classes or series, with each type, class or series having the rights and privileges, including voting rights, if any, set forth in this Agreement. The first class of Units is designated "Class A Units" and the second class is designated "Class B Incentive Units." The Class A Units shall be designated in three series: the "Class A-1 Units", the "Class A-2 Units" and the "Class A-3 Units". Each of the classes of Units shall have the voting powers, designations, preferences, rights, qualifications, limitations or restrictions, if any, as set forth in this Agreement. The Company may issue fractional Units pursuant to the terms of this Agreement, and all Units shall be rounded to the fourth decimal place.

(b) As of the date hereof, each Former Preferred Unit is hereby converted into one Class A-2 Unit, and 1,760,000 Class A-2 Units are issued to the Member in the amounts set forth on Schedule A opposite such Member's name. As of the date hereof, each Former Common Unit is hereby converted into one Class A-3 Unit, and 4,706,342 Class A-3 Units are issued to the Members in the amounts set forth on Schedule A opposite each Member's name. As of the date hereof, 10 Class A-1 Units are issued to the Members in the amounts set forth on Schedule A opposite each Member's name.

(c) The Company is hereby authorized to issue a total of 333,575,262 Class A Units and 55,729,052 Class B Incentive Units (which amount shall automatically increase proportionally by any amounts of Class A Units reserved after the date hereof pursuant to Section 3.2 or issued pursuant to Section 3.12 or Section 3.13).

3.2 Reserve. For so long any of the Warrants are outstanding, the Company shall reserve, and at all times from and after the date hereof keep reserved out of its authorized but unissued Units, such number of Units as may be necessary from time to time for purposes of effecting the issuance of Warrant Exercised Securities upon exercise of the Warrant Securities then outstanding.

3.3 Contribution. The names, addresses, Capital Contributions and number and series of Class A Units of the Class A Members are set forth on Schedule A, as it may be amended from time to time in accordance with the terms hereof. The names and number of Class B Incentive Units of the Class B Members are set forth on Schedule B, as it may be amended from

time to time in accordance with the terms hereof. The Company shall maintain and keep at its principal office an updated Schedule A and Schedule B. The Board of Managers shall amend Schedule A and Schedule B, from time to time, to reflect the then-current schedule of Interests (including to reflect changes resulting from a Cerberus Warrant Adjustment and/or a Quantlab Warrant Adjustment), without any action by the Members. For the avoidance of doubt, upon the exercise of a Warrant, any amount paid for the Warrant and any amounts paid to the Company in connection with the exercise of a Warrant shall be treated as a Capital Contribution by the applicable Warrant Holder.

3.4 Authorization and Issuance of Additional Interests.

(a) Subject to Section 3.8, Section 3.9 and Section 7.7, the Board of Managers shall have the right to cause the Company to issue and/or create and issue at any time after the Effective Date, and for such amount and form of consideration as the Board of Managers may determine, additional Interests (of existing classes or new classes) or other Equity Securities of the Company (including creating additional classes or series thereof having such powers, designations, preferences and rights as may be determined by the Board of Managers). In connection with the foregoing, the Board of Managers shall have the power to make such amendments to this Agreement in order to provide for other additional Interests, and such powers, designations and preferences and rights, as the Board of Managers in its discretion deems necessary or appropriate to give effect to such additional authorization or issuance, subject to Section 12.1. Notwithstanding anything in this Agreement to the contrary, without the consent of the Class A-2 Members holding a majority of the Class A-2 Units, the Company may not issue any additional Class A-2 Units or any additional Interests that have distribution rights that are senior or pari passu to the rights of the Class A-2 Units with respect to the Class A-2 Exit Preference Amount and the Exit Preference Buyout.

(b) Subject to Section 3.8, Section 3.9 and Section 7.7, the Board of Managers shall have the right to admit Additional Members and no other consent or approval of any other Members shall be required in connection therewith. A Person may be admitted to the Company as an Additional Member upon furnishing to the Board of Managers (i) a joinder agreement substantially in the form attached hereto as Exhibit B ("Joinder") pursuant to which such Person agrees to be bound by all of the terms and conditions of this Agreement, and (ii) such other documents or instruments as may be necessary or appropriate to effect such Person's admission as a Member (including entering into an investor representation agreement or such other documents as the Board of Managers may deem appropriate), which Joinder, documents and instruments shall be in form and substance satisfactory to the Board of Managers. Such admission shall become effective on the date on which the Board of Managers determines that the foregoing conditions have been satisfied and when any such admission is shown on the books and records of the Company. Schedule A and Schedule B shall be amended from time to time in accordance with the provisions of this Section 3.4 effective as of the effective date of the admission of an Additional Member to the Company. Notwithstanding the foregoing, any Warrant Holder who exercises any portion of a Warrant shall automatically become a Member with respect to such Warrant Exercised Securities.

3.5 Maintenance of Capital Accounts. The Company shall establish and maintain Capital Accounts for each Member. Each Member's Capital Account shall be credited with

(i) the amount of any money actually contributed by the Member to the capital of the Company, (ii) the Fair Market Value at the time of contribution of any property actually contributed (or deemed contributed, whether by the terms of this Agreement or upon a determination by the Board of Managers) by the Member, as determined by the Board of Managers (or the Independent Appraiser, as applicable) and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property), and (iii) the Member's share of Net Profits (or items of income or gain as determined pursuant to Section 4.1). Each Member's Capital Account shall be decreased by (a) the amount of any money actually distributed (or deemed distributed (including pursuant to Section 4.5)) to the Member by the Company, (b) the Fair Market Value at the time of distribution of any property distributed to the Member, as determined by the Board of Managers (or the Independent Appraiser, as applicable) at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property), and (c) the Member's share of Net Loss (or items of loss, expense or deduction as determined pursuant to Section 4.1).

In the event any Member Transfers any Units in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Units.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations and any amendment or successor provision thereto.

3.6 Additional Capital Contributions. Other than contributions by Additional Members in exchange for their Interests, no Member shall be required to make any Capital Contributions to the Company in excess of the amounts set forth in Schedule A or Schedule B, as applicable. No Member may make an additional Capital Contribution without the prior written consent of the Board of Managers, and any additional Capital Contribution shall be in the form of cash or securities or other property. At such time as any Member makes an additional Capital Contribution to the Company, the Capital Contributions and Percentage Interests of such Member shall be reasonably determined by the Board of Managers and valued at Fair Market Value by the Board of Managers (or the Independent Appraiser, as applicable). Schedule A and Schedule B shall be amended from time to time in accordance with the foregoing provisions of this Section 3.6. The provisions of this Section 3.6 are intended solely for the benefit of the Members in their capacity as Members, and, to the fullest extent permitted by Applicable Law, shall not be construed as conferring any benefit upon any creditor (including a Member in its capacity as a creditor) of the Company (and no such creditor shall be a third party beneficiary of this Agreement), and no Member shall have any duty or obligation to any creditor of the Company to make any additional Capital Contributions or to provide any additional financing or to cause the Board of Managers or any other Member to consent to the making of additional Capital Contributions or to the provision of additional financing.

3.7 Other Matters.

(a) Except as otherwise provided in this Agreement, no Member shall be entitled to demand or receive a return of his, her or its Capital Contributions or withdraw from the Company. No Member shall have the right to withdraw any part of his, her or its Capital Contributions from the Company prior to its liquidation and termination, unless such withdrawal is permitted under this Agreement.

(b) No Member shall receive any interest, salary, or drawing with respect to his, her or its Capital Contributions or his, her or its Capital Account or for services rendered on behalf of the Company or otherwise in his, her or its capacity as a Member.

(c) Nothing contained in this Agreement shall affect, limit or impair the rights and remedies of any Person in its capacity as a lender to the Company or any of its Subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money from such party. Without limiting the generality of the foregoing, any Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status as a direct or indirect equityholder of the Company or any of its Subsidiaries or (ii) any duty it may have to any other direct or indirect equityholder of the Company or any of its Subsidiaries, except as may be required under the applicable loan documents or by Applicable Law.

3.8 Preemptive Rights. Subject to Section 3.9 and prior to an IPO, Quantlab and Cerberus shall have a right of first offer to purchase up to their respective pro rata share (as described below) of all Preemptive Securities that the Company or any of its Subsidiaries may, from time to time, propose to sell and issue after the date of this Agreement, including pursuant to Sections 3.3 and 3.4, other than the Preemptive Securities excluded by Section 3.8(d) hereof. For purposes of this Section 3.8, Quantlab's and Cerberus's pro rata share, (x) with respect to Equity Securities, is equal a number of Equity Securities equal to the product of (I) the Fully Diluted Interest Percentage of Quantlab and Cerberus, respectively, immediately prior to the issuance of the Preemptive Securities and (II) the total number of Equity Securities set forth in the notice delivered pursuant to Section 3.8(b) and, (y) with respect to debt securities, is equal to the portion of the principal amount of the debt securities that is equal to the product of (I) the Fully Diluted Interest Percentage of Quantlab and Cerberus, respectively, immediately prior to the issuance of the Preemptive Securities and (II) the total aggregate principal amount of debt securities set forth in the notice delivered pursuant to Section 3.8(b). For purposes of this Agreement, (A) the term "Equity Securities" shall mean (i) any class or series of equity security, including any interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the Company or any of its Subsidiaries, (ii) any security convertible, with or without consideration, into any such equity security (including any option to purchase such a convertible security), (iii) any security carrying any warrant or right to subscribe to or purchase any such equity security, and (iv) any such warrant or right, and (B) the term "Preemptive Securities" shall mean (1) any Equity Securities, and (2) any debt security of the Company or any of its respective Subsidiaries.

(b) If the Company proposes to issue any Preemptive Securities, it shall give Quantlab and Cerberus written notice of its intention, describing the Preemptive Securities, the price, the amount and the terms and conditions upon which the Company proposes to issue the same. Quantlab and Cerberus shall have fifteen (15) Business Days from the giving of such

notice to agree to purchase its pro rata share of the Preemptive Securities for the price and upon the terms and conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Preemptive Securities to be purchased; provided that if the Company or any of its Subsidiaries is issuing Equity Securities together as a unit with any debt securities or other Equity Securities, then if Quantlab and/or Cerberus elects to purchase the Preemptive Securities pursuant to this Section 3.8, it must purchase the same proportionate mix of all of such securities. Notwithstanding anything in this Section 3.8 to the contrary, the Company shall not be required to offer or sell Preemptive Securities to Quantlab or Cerberus if it would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale.

(c) If Quantlab or Cerberus fails to exercise in full the right of first offer set forth in this Section 3.8, the Company shall have ninety (90) calendar days, beginning after the expiration of the fifteen (15) Business Day period referred to in Section 3.8(b), to sell Preemptive Securities in an amount no greater than the amount in respect of which Quantlab's and/or Cerberus's rights of first offer were not exercised, at the same or a greater price, and upon such terms and conditions (other than price) which, when taken as a whole, are no more favorable to the purchasers thereof than those specified in the Company's notice to Quantlab and Cerberus pursuant to this Section 3.8. If the Company has not sold such Preemptive Securities within ninety (90) calendar days of the notice provided pursuant to this Section 3.8, the Company shall not thereafter issue or sell any Preemptive Securities, without first offering such securities to Quantlab and Cerberus in the manner provided above.

(d) The right of first offer established by this Section 3.8 shall have no application to any of the following Preemptive Securities:

(i) Preemptive Securities issued to any third-party debt financing sources approved by the Board of Managers;

(ii) Preemptive Securities issued as consideration to a third party unaffiliated with the Class A Members, the Warrant Holders or the Company in a joint venture, merger, consolidation, acquisition or similar business combination approved by the Board of Managers;

(iii) Class B Incentive Units or other Preemptive Securities issued as an incentive to any manager, officer, director or employee of, or consultants or advisors to, the Company or any of its Subsidiaries in accordance with the terms of any applicable incentive plan of the Company or any of its Subsidiaries approved by the Board of Managers or otherwise, and not in excess of the Incentive Cap;

(iv) Warrant Exercised Securities;

(v) Preemptive Securities issued in connection with any IPO;

(vi) Preemptive Securities issued by the Company (or any Subsidiary of the Company, as applicable) in connection with any reclassification, recapitalization, distribution or similar event with respect to any equity interests in the Company (or equity interests in a Subsidiary of the Company, as applicable);

(vii) Preemptive Securities issued by the Company (or any Subsidiary of the Company, as applicable) upon exercise, conversion or exchange of securities then outstanding exercisable or convertible for or exchangeable into equity interests in the Company (or equity interests in a Subsidiary of the Company, as applicable); provided that the sale or issuance of such exercisable, convertible or exchangeable securities complied with or was exempted by this Section 3.8;

(viii) Preemptive Securities issued by the Company (or any Subsidiary of the Company, as applicable) as a dividend or other distribution on equity interests in the Company (or on equity interests of such Subsidiary of the Company, as applicable), or equity interests in the Company (or equity interests in any Subsidiary of the Company, as applicable) resulting from any subdivision or combination of equity interests in the Company (or of equity interests in such Subsidiary of the Company, as applicable) so excluded or on all equity interests in the Company (or on equity interests in such Subsidiary of the Company, as applicable) then outstanding;

(ix) Preemptive Securities issued pursuant to Section 3.12 or Section 3.13;

(x) Preemptive Securities issued by the Company (or any Subsidiary of the Company, as applicable) in connection with a Sale Transaction; and

(xi) Preemptive Securities issued by any wholly owned Subsidiary of the Company to the Company or any other wholly owned Subsidiary of the Company.

3.9 Dilution. Notwithstanding anything to the contrary in this Agreement, neither Cerberus, Quantlab nor PDQ shall suffer dilution with respect to its Warrant Exercised Securities in respect of the issuance of any other Warrant Exercised Securities (any of the foregoing, "Additional Interests"). Upon the issuance of any such Additional Interest, the Company shall automatically issue (for no additional consideration) to any Person holding Warrant Exercised Securities issued upon exercise of, the Cerberus Warrant, Quantlab Warrant or PDQ Warrant, a number of Additional Interests such that Cerberus, Quantlab or PDQ, as applicable, maintains the same Fully Diluted Interest Percentage attributable to the Warrant Exercised Securities (calculated excluding the number of Units that would be issued to such Holder with respect to its Warrant) as it had immediately prior to the issuance of any Additional Interest.

3.10 Warrant Adjustment. Pursuant to the terms of the Cerberus Warrant or the Quantlab Warrant, and in the event of a Cerberus Warrant Adjustment or a Quantlab Warrant Adjustment, the Warrant Exercised Securities resulting from the exercise of such Warrants shall be adjusted in accordance with the terms of the applicable Warrant. If a downward adjustment is made to the Warrant Exercised Securities held by Cerberus or Quantlab, then the Company shall promptly pay, by wire transfer of immediately available funds, to the applicable Member, the amount that such Member contributed to the Company upon exercise of such Warrant for the number of Warrant Exercised Securities subject to such adjustment pursuant to this Section 3.10 plus, in the event of such downward adjustment, interest on the amount determined to be paid for the Warrant Exercised Securities that are being adjusted pursuant to this Section 3.10, accruing (from the time that the Warrant Exercised Securities were originally issued) at the continuously

compounding rate of the Cash Interest Rate (as defined in the Financing Agreement) per annum until the date of such Warrant Adjustment, and the Member's Capital Account and Schedule A to this Agreement shall be adjusted accordingly. For the avoidance of doubt, any adjustment to the Warrant Exercised Securities held by Cerberus or Quantlab (as applicable) pursuant to this Section 3.10 shall be treated as an adjustment to the purchase price paid in respect of such Warrant Exercised Securities for income tax purposes.

3.11 PDQ Warrant Exchange. In accordance with the terms of the Satisfaction and Restatement of Indebtedness and under those certain limited circumstances set forth therein, the "Fixed Debt" (as defined in the Satisfaction and Restatement of Indebtedness) may be converted into a trade payable at PDQ's election, and upon such election, PDQ shall surrender the PDQ Warrant and thereafter, the number of Warrant Securities and, if applicable, Warrant Exercised Securities held by Cerberus and the Quantlab Entities shall be automatically increased by the number of Units underling the PDQ Warrant at the time of such exchange, and such increase shall be made in proportion to Cerberus's and Quantlab's relative number of Warrant Exercised Securities and/or Warrant Securities at such time, as applicable (such exchange, the "PDQ Exchange"). Upon the PDQ Exchange, the Company shall cause the Member's Capital Account and Schedule A to this Agreement to be adjusted accordingly.

3.12 Adjustment in the Event of a Cerberus Breach. (a) If Cerberus or any Affiliate thereof refuses to fund all or any portion of the Loan under the Financing Agreement and such refusal to fund is in breach of the Financing Agreement, then:

(i) the number of Warrant Securities for which the Cerberus Warrant may be exercisable shall automatically and without any further action by any Person be decreased in accordance with Section 1(f) of the Cerberus Warrant (such adjustment, the "Cerberus Breach Adjustment");

(ii) each Class A Member shall automatically receive an additional number of Class A Units equal to an amount equal to the product of (A) the Fully Diluted Interest Percentage represented by such Class A Member's Class A Units only (calculated by excluding any Warrant Securities held by such Class A Member from the numerator and the number of Units underlying the Cerberus Breach Adjustment from the denominator) multiplied by (B) the number of Units underlying the Cerberus Breach Adjustment; and

(iii) each Warrant Holder (other than the holder of the Cerberus Warrant) shall have its Warrant Quantity (as defined in its Warrant) automatically increased by an amount that is equal to the product of (A) the Fully Diluted Interest Percentage represented by the Warrant Securities under such Warrant only (calculated by excluding any Class A Units held by such Warrant Holder from the numerator and the number of Units underlying the Cerberus Breach Adjustment from the denominator) multiplied by (B) the number of Units underlying the Cerberus Breach Adjustment.

(b) Upon a Cerberus Breach Adjustment, the Company shall cause each Member's Capital Account and Schedule A to this Agreement to be adjusted accordingly.

3.13 Adjustment in the Event of a Quantlab Breach. (a) If Quantlab refuses to fund all or a portion of any Additional Advance (as defined in the Subordinated Note) under the Subordinated Note and such refusal to fund is in breach of the Subordinated Note, then:

(i) the number of Warrant Securities for which each Quantlab Warrant originally issued to AVG Holdings LP and Southport Investments, LP may be exercisable shall automatically and without any further action by any Person be decreased in accordance with Section 1(f) of such Quantlab Warrant (such adjustment in the aggregate across all applicable Quantlab Warrants, the "Quantlab Breach Adjustment");

(ii) each Class A Member shall automatically receive an additional number of Class A Units equal to an amount equal to the product of (A) the Fully Diluted Interest Percentage represented by such Class A Member's Class A Units only (calculated by excluding any Warrant Securities held by such Class A Member from the numerator and the number of Units underlying the Quantlab Breach Adjustment from the denominator) multiplied by (B) the number of Units underlying the Quantlab Breach Adjustment; and

(iii) each Warrant Holder (other than the holder of a Quantlab Warrant originally issued to AVG Holdings LP and Southport Investments, LP) shall have its Warrant Quantity (as defined in its Warrant) automatically increased by an amount that is equal to the product of (A) the Fully Diluted Interest Percentage represented by the Warrant Securities under such Warrant only (calculated by excluding any Class A Units held by such Warrant Holder from the numerator and the number of Units underlying the Quantlab Breach Adjustment) multiplied by (B) the number of Units underlying the Quantlab Breach Adjustment.

(b) Upon a Quantlab Breach Adjustment, the Company shall cause each Member's Capital Account and Schedule A to this Agreement to be adjusted accordingly.

ARTICLE IV

ALLOCATIONS AND DISTRIBUTIONS

4.1 Allocation of Net Profits and Net Loss of the Company. Net Profits and Net Loss of the Company in each Fiscal Year (or relevant portion thereof) shall be allocated to the Members as follows:

(a) Net Profits and Net Loss of the Company in each Fiscal Year (or the applicable period) shall be allocated to the Members in such a manner that, as of the end of such Fiscal Year (or the applicable period), the sum of the Capital Account of each Member shall be equal, as nearly as possible, to the respective net amounts, positive or negative, which would be distributed to them under this Agreement, 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 liquidation pursuant to Section 11.3. For the avoidance of doubt, Net Profit and Net Loss corresponding to amounts withheld from amounts otherwise distributable in respect of unvested Class B Incentive Units under Section 4.3(a) shall be allocated to such Class B Incentive Units.

(b) Special Allocation Provisions. Notwithstanding any other provision in this Section 4.1:

(i) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain or Member Nonrecourse Debt Minimum Gain (determined in accordance with the principles of Treasury Regulations Sections 1.704-2(d) and 1.704-2(i)) during any Company taxable year, the Members shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to their respective shares of such net decrease during such year, determined pursuant to Regulations Sections 1.704-2(g) and 1.704-2(i)(5). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 4.1(b)(i) is intended to comply with the minimum gain chargeback requirements in such Regulations Sections and shall be interpreted consistently therewith; including that no chargeback shall be required to the extent of the exceptions provided in Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

(ii) Qualified Income Offset. In the event that any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in its Capital Account created by such adjustments, allocations or distributions as promptly as possible; provided that an allocation pursuant to this Section 4.1b)(ii) shall be made only to the extent that a Member would have a deficit balance in his Capital Account in excess of such sum after all other allocations provided for in this Section 4.1 have been tentatively made as if this Section 4.1(b)(ii) were not in this Agreement. This Section 4.1(b)(ii) is intended to comply with the "qualified income offset" requirement of the Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iii) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore, if any, pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 4.1(b)(iii) shall be made only if and to the extent that a Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 4.1 have been tentatively made as if Section 4.1(b)(ii) and this Section 4.1(b)(iii) were not in this Agreement.

(iv) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any taxable period shall be allocated to the Member who bears the economic risk of loss with respect to the liability to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i).

(v) Special Allocations. Any special allocations of income, gain, loss, deduction or credit pursuant to Section 4.1(b)(ii) or Section 4.1(b)(iii) hereof shall be taken into account in computing subsequent allocations pursuant to this Section 4.1, so that the net amount of any items so allocated and all other items allocated to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each Member if such allocations pursuant to Section 4.1(b)(ii) or Section 4.1(b)(iii) had not occurred.

(vi) Noncompensatory Options. Upon a Warrant Holder's exercise of a Warrant, allocations shall be made as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(s) (including Capital Account reallocations to the extent required by Treasury Regulations Section 1.704-1(b)(2)(iv)(s)(3)) and, to the extent necessary, corrective allocations shall be made as provided in Treasury Regulations Section 1.704-1(b)(4)(x), beginning with the taxable year of such exercise and in all succeeding taxable years until the required allocations are fully taken into account, to take into account any Capital Account reallocation.

(c) Other Allocation Provisions. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulations.

4.2 Available Cash. Any distributions of Available Cash shall be made at the election of the Board of Managers; provided that in the case of a dissolution of the Company, proceeds of an IPO or proceeds with respect to a Sale Transaction or an Asset Sale, unless such distribution is prohibited by Section 18-607(a) of the Act, the Board of Managers shall be required to make the distributions pursuant to Sections 4.3(a)(ii)(A) and 4.3(d) and any reserves deducted from Available Cash shall be reasonably determined by the Board of Managers.

4.3 Distributions.

(a) Any distributions of Available Cash shall be distributed to the Members as follows:

(i) if there is no Class A-2 Exit Preference Amount or Class A-2 Residual Preference Amount, then to the Class A Members and Class B Members in proportion to the Percentage Interest of each such Member;

(ii) if there is any Class A-2 Exit Preference Amount or Class A-2 Residual Preference Amount, then to the Members in the following order:

(A) in the case of a distribution of Available Cash with respect to a dissolution of the Company, proceeds of an IPO or proceeds with respect to a Sale Transaction or a sale of substantially all of the assets of the Company, first to the Class A-2 Members, until the Class A-2 Exit Preference Amount is reduced to $0, in proportion to the number of Class A-2 Units held by such Class A-2 Member relative to the number of the Class A-2 Units then outstanding;

(B) to the Class A-1 Members, an amount equal to the remaining amount multiplied by the aggregate Percentage Interest of the Class A-1 Members, in proportion to the Percentage Interest of each such Member;

(C) to the Class A-2 Members, Class A-3 Members and Class B Members as follows:

(i) first, to the Class A-2 Members, until the Class A-2 Preference is reduced to $0, in proportion to the number of Class A-2 Units held by such Class A-2 Member relative to the number of the Class A-2 Units then outstanding;

(ii) next, to the Class A-2 Members, until the Class A-2 Preference Return is reduced to $0, in proportion to the number of Class A-2 Units held by such Class A-2 Member relative to the number of the Class A-2 Units then outstanding;

(iii) then to the Class A-2 Members, the Class A-3 Members and the Class B Members based on the number of Class A-2 Units, Class A-3 Units and Class B Units held by such Member relative to the number of the sum of the Class A-2 Units, Class A-3 Units and Class B Units then outstanding.

provided that, in the case of all distributions under Section 4.3(a), no distribution shall be made in respect of the Class B Incentive Unit until the relevant distribution threshold in

respect of such Class B Incentive Unit has been satisfied, and to the extent any of the Class B Incentive Units are not vested, then that portion of such Distribution that would otherwise have been made to the Class B Member with respect to that portion of Class B Incentive Units, as applicable, that are not vested at such time shall be held by the Company and shall not be distributed until such time as such Class B Incentive Units are vested.

"**Class A-2 Exit Preference Amount**" is equal to the lesser of (x) an amount equal to (i) $1,833,757.00 minus amounts distributed to the Class A-2 Members pursuant to Section 4.3(a)(ii)(A), plus (ii) a cumulative amount equal to 5% of such amount in (i), calculated at the end of each fiscal year, and (y) the Class A-2 Residual Preference Amount; provided that for the fiscal year ending December 31, 2017 or for any partial year in which a calculation is made such calculation shall be a pro-rated amount based on the number of days of such fiscal year that have occurred; provided further that if the Exit Preference Buyout has occurred, the Class A-2 Exit Preference Amount shall be deemed to be $0.

"**Class A-2 Residual Preference Amount**" is equal to the Class A-2 Preference plus Class A-2 Preference Return.

"**Class A-2 Preference**" means, as of any time, (x) $11,019,664.00 minus (y) the amounts distributed to the Class A-2 Members pursuant to Sections 4.3(c), Section 4.3(a)(ii)(A) or Section 4.3(a)(ii)(C)(i); provided that, if the Exit Preference Buyout has occurred, the Class A-2 Preference shall be reduced by the Exit Preference Reduction Amount.

"**Class A-2 Preference Return**" means a cumulative amount equal to (x) 5% of the Class A-2 Preference, calculated at the end of each fiscal year each year minus (y) the amounts distributed to the Class A-2 Members pursuant to Section 4.3(c) (to the extent it has not reduced the Class A-2 Preference), Section 4.3(a)(ii)(A) (to the extent it has not reduced the Class A-2 Preference) or Section 4.3(a)(ii)(C)(ii); provided that for the fiscal year ending December 31, 2017 or for any partial year in which a calculation is made the Class A-2 Preference Return shall be a pro-rated amount based on the number of days of such fiscal year that have occurred; provided that, if the Exit Preference Buyout occurs and the amount of the Exit Preference Reduction Amount exceeds the Class A-2 Preference, the Class A-2 Preference Return shall be reduced by such excess.

"**Exit Preference Reduction Amount**" means an amount equal to the sum of (A) $1,464,387.00 plus (B) 50% of the difference between the Class A-2 Exit Preference Amount and $1,464,387.00

(b) Notwithstanding the foregoing, the parties hereto agree that for U.S. federal income tax purposes, the Class B Incentive Units when issued are intended to constitute "profits interests" as that term is defined in the IRS Revenue Procedure 93-27, 1993-2 CB 343, and accordingly each holder of a Class B Incentive Unit shall participate in distributions of Net Profits pursuant to Section 4.3(a) only to the extent of such Class B Incentive Unit's share of operating income and appreciation in the value of the Company accruing from and after the date of such Unit is issued. In addition, the parties hereto acknowledge the proposed revenue procedure set forth in Notice 2005-43, 2005-24 I.R. B. 1221 (May 20, 2005), and expressly

intend that the Company shall be eligible to make a "Safe Harbor Election" and to issue "Safe Harbor Partnership Interests" within the meaning thereof. If such proposed revenue procedure (or any substantial equivalent) is promulgated in final, effective form or is replaced by similar legislation or regulation, the Board of Managers shall (without the need for further action by the other Members) have all necessary authority under this Agreement to reasonably give effect to the intention set forth in the preceding sentence (including the authority to make an applicable tax election on behalf of the Company necessary to give effect to such intention).

(c) The Board of Managers may in its sole discretion distribute to each Member with respect to each taxable year of the Company an amount of cash equal to such Member's Tax Liability Amount (as defined herein) for such taxable year (a "Tax Distribution"). For this purpose, the "Tax Liability Amount" of a Member for any given taxable year of the Company means an amount equal to (x) the Applicable Tax Rate multiplied by (y) the cumulative net taxable income allocated to such Member in respect of its Interest from the date hereof to the date on which such Tax Distribution is to be made, less (z) the cumulative amount of prior distributions (including Tax Distributions) previously made to such Member from the date hereof to the date on which such Tax Distribution is to be made. If there is insufficient Available Cash to distribute to each Member (or the Board of Managers otherwise determines not to distribute) an amount equal to each Member's Tax Liability Amount, the Company may make Tax Distributions pursuant to this Section 4.3 to the Members with Tax Liability Amounts pro rata in accordance with each such Member's respective Tax Liability Amount. Tax Distributions are advances, and future distributions under Section 4.3(a) shall be made so that the Members receive in the aggregate the same amount they would have received had no Tax Distributions been made (and the Class A Exercise Price (as defined in the Warrants) shall be reduced in the manner set forth in each Warrant such that each Warrant Holder receives the benefit of any Tax Distributions as if such Warrant Holder had exercised 100% of its Warrant at the time of such Tax Distribution).

(d) If a dissolution of the Company, an IPO, a Sale Transaction or a sale of substantially all of the assets of the Company does not occur on or prior to July [●], 2019, then upon notice to the Company on or prior to August [●], 2019, the Class A-2 Members may elect to require the Company to eliminate the Class A-2 Exit Preference Amount by paying an aggregate amount to the Class A-2 Members an amount equal to 50% of the then existing Class A-2 Exit Preference Amount (the "**Exit Preference Buyout**"). Unless payment of the Exit Preference Buyout is prohibited by Section 18-607(a) of the Act, the Company is obligated to pay the Exit Preference Buyout within 60 days of such election of the Class A-2 Members; provided that if such payment is prohibited by Section 18-607(a) of the Act, the Company shall become obligated to pay the Exit Preference Buyout at the point when such payment is no longer prohibited by Section 18-607(a) of the Act. If payment of the Exit Preference Buyout is not prohibited by Section 18-607(a) of the Act, the Class A-2 Members will have the status of, and be entitled to all remedies available to, a creditor of the Company with respect to the Company's payment of the Exit Preference Buyout as provided in Section 18-606 of the Act. If the Company does not pay the Exit Preference Buyout in full within 60 days of such election of the Class A-2 Members for any reason, the Exit Preference Buyout (or any unpaid portion thereof) shall accrue interest (from and after the date that is 60 days after such election of the Class A-2 Members) at an interest rate of 9% per annum until paid in full. During the period of time where the Exit Preference Buyout is owed but not paid, during any period when the Company is unable

to or does not pay or for the thirty day period starting July [●], 2019, the Class A-2 Members shall have the right to inspect the Company's books and records reasonably related to the determination of the amount of the Exit Preference Buyout and related matters during the Company's business hours upon reasonable prior notice and the Company shall upon request of the Class A-2 Members provide a calculation of the Exit Preference Buyout, the financial statements described Section 9.2 and other information as reasonably requested and relevant to the Exit Preference Buyout during such time period.

4.4 Distributions Other Than Cash. Upon a distribution of Marketable Securities or other property other than cash, such Marketable Securities or other in-kind property shall be deemed to have been sold at their Fair Market Value (as determined by the Board of Managers (or the Independent Appraiser, as applicable)) on the date of such distribution and the proceeds of such sale shall be deemed to have been distributed to the Members for all purposes of this Agreement.

4.5 Amounts Withheld. Notwithstanding any other provision of this Agreement, each Member and Warrant Holder hereby authorizes the Company to withhold and to pay over, or otherwise pay, any withholding or other taxes (including, for the avoidance of doubt, any actual or imputed tax underpayments) payable by the Company or any of its Affiliates (pursuant to the Code or any provision of United States Federal, state or local or non-U.S. tax law) with respect to such Member or Warrant Holder or as a result of such Member's or Warrant Holder's participation in the Company. If and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member or Warrant Holder shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding or other tax is required to be paid, which payment shall be deemed to be a distribution pursuant to this Agreement. To the extent that the aggregate amount of such payments to a Member or Warrant Holder for any period exceeds the distributions that such Member or Warrant Holder would have received for such period but for such withholding, the Board of Managers shall notify such Member or Warrant Holder as to the amount of such excess and such Member or Warrant Holder shall make a prompt payment to the Company of such amount by wire transfer, or, in the discretion of the Board of Managers, future distributions to such Member or Warrant Holder shall be reduced by such excess.

4.6 Tax Allocations. For income tax purposes only, each item of income, gain, loss and deduction of the Company shall be allocated among the Members (including, for purposes of this Section 4.6, persons treated as partners for U.S. federal income tax purposes) in the same manner as the corresponding items of Net Profits and Net Losses and specially allocated items are allocated for Capital Account purposes; provided that in the case of any Company asset the Book Value of which differs from its adjusted tax basis for U.S. federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Sections 704(c) of the Code using the "traditional method" under Regulations Section 1.704-3(b) so as to take account of the difference between Book Value and adjusted basis of such asset. Notwithstanding the foregoing, the Board of Managers may make such allocations as they reasonably deem necessary to give economic effect to the provisions of this Agreement, taking into account such facts and circumstances as they reasonably deem necessary for this purpose.

ARTICLE V

RIGHTS AND DUTIES OF MEMBERS AND WARRANT HOLDERS

5.1 Liability of Members and Warrant Holders. No Member or Warrant Holder shall be liable in its capacity as a Member or Warrant Holder for the liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members or Warrant Holders for liabilities of the Company.

5.2 Representations and Warranties. As of the date of this Agreement, each of the Members and Warrant Holders hereby, severally but not jointly, represents and warrants to each of the other Members and the Company as follows:

(a) The Units or Warrants being acquired by such Member or Warrant Holder, as applicable are being purchased for such Member's or Warrant Holder's own account and not with a view to, or for sale in connection with, any distribution or public offering thereof within the meaning of the Securities Act or any applicable state securities laws. Such Member or Warrant Holder understands that his, her or its Units or Warrants, as applicable, have not been registered under the Securities Act or any state securities laws by reason of their contemplated issuance in transactions exempt from the registration and prospectus delivery requirements thereof and that the reliance of the Company and others upon such exemptions is predicated in part by the representations and warranties of such Member or Warrant Holder contained herein. No other Person has any right with respect to or interest in the Units or Warrants acquired by such Member or Warrant Holder, as applicable, nor has such Member or Warrant Holder agreed to give any Person any such interest or right in the future.

(b) Such Member or Warrant Holder has the requisite power and authority (whether corporate or otherwise) and legal capacity to enter into, and to carry out his, her or its obligations under, this Agreement. The execution and delivery by such Member or Warrant Holder of this Agreement and the consummation by such Member or Warrant Holder of the transactions contemplated hereby have been duly authorized by all necessary action (corporate or otherwise) on the part of such Member or Warrant Holder, as applicable.

(c) This Agreement has been duly executed and delivered by such Member or Warrant Holder, as applicable, and constitutes a valid and binding obligation enforceable against such Member or Warrant Holder, as applicable, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of general application affecting creditors and general principles of equity.

(d) Such Member or Warrant Holder is not subject to, or obligated under, any provision of (i) any agreement, contract, arrangement or understanding, (ii) any license, franchise or permit, or (iii) any law, regulation, order, judgment or decree, that would be breached or violated, or in respect of which a right of termination or acceleration or any encumbrance or other lien on any of such Member's or Warrant Holder's assets would be created, by such

Member's or Warrant Holder's execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(e) No authorization, consent or approval of, waiver or exemption by, or filing or registration with, any public body, court or other governmental authority or any other third party is necessary on such Member's or Warrant Holder's part for the consummation of the transactions contemplated by this Agreement that has not previously been obtained by such Member or Warrant Holder.

(f) No Person has or will have, as a result of any act or omission by such Member or Warrant Holder, any right, interest or valid claim against the Company or any other Member or Warrant Holder for any commission, fee or other compensation as a finder or broker, or in any similar capacity, in connection with any of the transactions contemplated by this Agreement.

(g) Neither such Member or Warrant Holder nor any of its Affiliates is, nor will the Company as a result of such Member or Warrant Holder holding an interest in the Company be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended (the "1940 Act").

(h) Such Member or Warrant Holder is acquiring his, her or its Units or Warrants, as applicable, based upon his, her or its own investigation, and the exercise by such Member or Warrant Holder of his, her or its rights and the performance of his, her or its obligations under this Agreement will be based upon his, her or its own investigation, analysis and expertise. Such Member or Warrant Holder has knowledge and experience in financial and business matters such that such Member or Warrant Holder is capable of evaluating the merits and risks of the investment contemplated by this Agreement and such Member or Warrant Holder is able to bear the economic risk of his, her or its investment in the Company (including a complete loss of his, her or its investment). During negotiation of the transactions contemplated herein, such Member or Warrant Holder has been afforded full and free access to books, financial statements, records, contracts, documents and other information concerning the Company and its Subsidiaries, and has been afforded the opportunity to ask questions concerning the business, operations, financial condition, assets and liabilities of the Company and its Subsidiaries and other relevant matters as such Member has deemed necessary or desirable and has been provided with all such information as has been requested.

(i) Such Member or Warrant Holder recognizes that no public market exists for the Units acquired hereunder or the Warrants, and no representation has been made to such Member or Warrant Holder that any such public market will exist in the future. Such Member or Warrant Holder understands that he, she or it must bear the economic risk of such Member's or Warrant Holder's investment in the Company indefinitely unless such Member's Units or Warrants are registered pursuant to the Securities Act or an exemption from such registration is available, and unless the disposition of such Units or Warrant Securities are registered or qualified under applicable state securities laws or an exemption from such registration or qualification is available, and that the Company has no obligation or intention of so registering or qualifying such Units or Warrant Securities. Such Member or Warrant Holder understands that there is no assurance that any exemption from the Securities Act will be available, or, if

available, that such exemption will allow such Member or Warrant Holder to dispose of or otherwise Transfer any or all of such Member's Units or Warrants, in the amounts or at the times any such Member or Warrant Holder might desire. Such Member or Warrant Holder acknowledges that the Company is not presently under any obligation to register the Units under Section 12 of the Securities Exchange Act of 1934, as amended, or to make publicly available the information specified in Rule 144 under the Securities Act and that it may never be required to do so.

ARTICLE VI

INDEMNIFICATION OF MEMBERS

6.1 General. The Company, its receiver or its trustee (to the extent of the Company's assets) shall indemnify, save harmless, and pay all judgments and claims against each Officer, Manager, Member, Warrant Holder or any employee, officer, director or manager of such Member or Warrant Holder relating to any liability or damage incurred by reason of any act performed or omitted to be performed by such Person in connection with the business of the Company, including reasonable attorneys' fees and expenses incurred by such Person in connection with the defense of any action based on any such act or omission, which attorneys' fees and expenses may be paid as incurred, including all such liabilities under federal and state securities laws (including the Securities Act) as permitted by Applicable Law.

6.2 Company Expenses. The Company shall indemnify, save harmless, and pay all expenses, costs, or liabilities reasonably incurred by any Member or Warrant Holder who for the benefit of the Company and consistent with its purpose, makes any deposit, acquires any option, or makes any other similar payment or assumes any obligation in connection with any property proposed to be acquired by the Company, which action shall have been consented to by the Board of Managers, and who suffers any financial loss as the result of such action.

6.3 Limitations.

(a) Notwithstanding anything to the contrary in Sections 6.1 and 6.2 above, no Person shall be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence.

(b) Notwithstanding anything to the contrary in Sections 6.1, 6.2 and 6.3(a) above, in the event that any provision of such Sections is determined to be invalid in whole or in part, the remainder of such Sections shall be enforceable to the maximum extent permitted by law.

ARTICLE VII

MANAGEMENT

7.1 General.

(a) Except for situations in which the approval of any Member is expressly required by non-waivable provisions of Applicable Law or as otherwise expressly required by

this Agreement, (i) Class A Members shall have no right to vote on matters except to vote (A) to elect Managers to fill vacancies on the Board of Managers pursuant to Section 7.2(f), and (B) on any matter presented by the Board of Managers to, or required under this Agreement to be presented to, the Class A Members for approval, and each Member shall be entitled to one vote per Unit and none of the Class B Members shall have any voting rights whatsoever with respect to their Class B Incentive Units, (ii) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, a board of managers (the "Board of Managers") and (iii) subject to Section 7.7, the Board of Managers may make all decisions and take all actions for the Company not otherwise expressly provided for in this Agreement including the issuance of Class B Incentive Units. Any approval of the Class A Members or any other Member specified herein shall be deemed to mean the approval of such Person(s) by affirmative vote or written consent. The Board of Managers shall be the "managers" of the Company within the meaning of Section 18-402 of the Act. Subject to the Act or as otherwise provided in this Agreement, the Board of Managers must act as a board, and no individual Manager, as such, shall have any authority to bind or act for, or assume any obligation or responsibility on behalf of, the Company unless expressly authorized to do so by action taken by the Board of Managers in accordance with this Agreement.

(b) The Members shall not have regular meetings or voting rights with respect to the management of the Company and, except as expressly required by nonwaivable provisions of Applicable Law, shall not be entitled to vote on or consent to or approve or disapprove actions or decisions regarding the Company except as expressly provided for in this Agreement.

(c) Any duties (including fiduciary duties) of a Covered Person to the Company or to any other Covered Person that would otherwise apply at law or in equity are hereby eliminated to the fullest extent permitted under the Act and any other Applicable Law, provided that (i) the foregoing shall not eliminate the obligation of each Member to act in compliance with the express terms of this Agreement and (ii) the foregoing shall not be deemed to eliminate the implied contractual covenant of good faith and fair dealing. Notwithstanding anything to the contrary contained in this Agreement, each of the Members hereby acknowledges and agrees that each Manager, in determining whether or not to vote in support of or against any particular decision for which the Board of Managers' consent is required, may act in and consider the best interest of the Person or Persons who designated such Manager and shall not be required to act in or consider the best interests of the Company, any of its Subsidiaries or any other Members. For the avoidance of doubt, no Managers designated by Cerberus or Quantlab (each, an "Lender Manager") and no Member or Warrant Holder that designated such Lender Manager shall have any duty to disclose to the Company or the Board of Managers confidential information regarding any corporate opportunity or other potential investment in such Lender Manager's or such Member's or Warrant Holder's possession even if it is material and relevant information to the Company and/or the Board of Managers and neither such Lender Manager nor such Member or Warrant Holder shall be liable to the Company or the other Members or Warrant Holders for breach of any duty (including the duty of loyalty and any other fiduciary duties) as a Manager, Member or Warrant Holder by reason of such lack of disclosure of such confidential information. The provisions of this Agreement, to the extent that they restrict or eliminate the duties (including the duty of loyalty and other fiduciary duties) and liabilities of an Lender Manager otherwise existing at law or in equity or by operation of this Section 7.1(c), are agreed by the Members and the Warrant Holders to replace such duties and liabilities of such

Lender Manager. If a Lender Manager acquires knowledge of a potential transaction or matter that may be a business opportunity for both the Member or Warrant Holder (or an Affiliate of the Member or Warrant Holder) that has the right to designate such Lender Manager hereunder and the Company or another Member or Warrant Holder, such Lender Manager shall have no duty to communicate or offer such business opportunity to the Company or any other Member or Warrant Holder and shall not be liable to the Company or the other Members or Warrant Holders for breach of any duty (including any fiduciary duties) as a Manager by reason of the fact that such Investor Manager directs such opportunity to the Member or Warrant Holder or an Affiliate of the Member or Warrant Holder that has the right to designate such Lender Manager or any other Person, or does not communicate information regarding such opportunity to the Company, and any such direction of an opportunity by such Lender Manager, and any action with respect to such an opportunity by such Member or Warrant Holder or Affiliate of such Member or Warrant Holder, shall not be wrongful or improper or constitute a breach of any duty hereunder, at law, in equity or otherwise.

7.2 Board of Managers.

(a) The Board of Managers shall initially consist of six (6) members and be adjusted as provided in this Section 7.2. The names of the initial members of the Board of Managers are set forth on Exhibit C.

(b) From and after the date hereof and until an IPO, if Cerberus owns in the aggregate Units and Warrant Securities constituting more than 35% of the outstanding Class A Units (including any Warrant Exercised Securities held by Quantlab or Cerberus) and Warrant Securities held by Quantlab and Cerberus, Cerberus shall have the right to appoint three (3) members of the Board of Managers. If, on any date, Cerberus owns in the aggregate at least 50% of the Units or Warrant Securities that it owned as of the date hereof (but less than 50% of the outstanding Class A Units (including any Warrant Exercised Securities held by Quantlab or Cerberus) and Warrant Securities held by Cerberus or Quantlab on such date), from and after such date until an IPO, Cerberus shall have the right to appoint two (2) members of the Board of Managers. If, on any date, Cerberus owns less than 50% of the Units or Warrant Securities that it owned as of the date hereof, from and after such date until an IPO, Cerberus shall have the right to appoint one (1) member of the Board of Manager; provided that if, on any date, Cerberus owns no Units or Warrant Securities, from and after such date, Cerberus shall no longer have the right to appoint any members of the Board of Managers pursuant to this Section 7.2(b).

(c) From and after the date hereof and until an IPO, and for so long as Quantlab owns in the aggregate Units or Warrant Securities constituting at least 25% the outstanding Class A Units (including any Warrant Exercised Securities held by Cerberus or Quantlab) and Warrant Securities held by Cerberus or Quantlab, Quantlab shall have the right to appoint two (2) members of the Board of Managers. If, on any date, Quantlab owns in the aggregate at least 50% of the Units and Warrant Securities that it owned as of the date hereof (but less than 25% the outstanding Class A Units (including any Warrant Exercised Securities held by Cerberus or Quantlab) and Warrant Securities held by Cerberus or Quantlab on such date), from and after such date until an IPO, Quantlab shall have the right to appoint one (1) member of the Board of Managers. If, on any date, Quantlab owns no Units or Warrant

Securities, from and after such date, Quantlab shall no longer have the right to appoint any members of the Board of Managers pursuant to this Section 7.2(c).

(d) Subject to Section 7.2(m), from and after the date hereof until an IPO, and for so long as Cloyd Industries owns in the aggregate at least 50% of the Units and Warrant Securities owned by it as of the date hereof and Harvey Cloyd is employed as the Chief Executive Officer of the Company, Cloyd Industries shall have the right to appoint one (1) member of the Board of Managers. For the avoidance of doubt, if, on any date, Cloyd Industries owns less than 50% of the Units and Warrant Securities that it owned as of the date hereof or is no longer employed as the Company's Chief Executive Officer, from and after such date, Cloyd Industries shall no longer have the right to appoint any members of the Board of Managers pursuant to this Section 7.2(d).

(e) Each Manager shall hold office until his or her successor shall have been appointed and qualified or until his or her earlier resignation, removal, death or disability.

(f) Subject to Section 7.2(g), each of Cerberus, Quantlab and Cloyd Industries shall have the exclusive right to remove, with or without cause, any Manager designated by such Person, respectively, and to fill any vacancy created by the death, disability, removal or resignation of any Manager designated by such Person, respectively.

(g) In the event of a change in the ownership in the Company of Cerberus, Quantlab, Cloyd Industries and their Permitted Transferees that results in Cerberus, Quantlab or Cloyd Industries, as the case may be, no longer having the right to appoint one or more Managers (the "Removed Manager(s)"), (i) Cerberus, Quantlab or Cloyd Industries, as the case may be, shall cause such Removed Manager(s) to resign from the Board of Managers immediately upon the occurrence of such change and (ii) the vacancy created by such resignation shall be filled by a simple majority vote of the Class A Members.

(h) Prior to an IPO, the size of the Board of Managers may not be increased or decreased without the written consent of Cerberus and Quantlab.

(i) Subjection to Section 7.7, the Board of Managers may, from time to time, designate one or more persons to be officers of the Company (the "Officers"). The Officers so designated shall have such authority and perform such duties as the Board of Managers may, from time to time, delegate to them.

(j) Subjection to Section 7.7, each Officer shall serve until the earlier of his death, disability, resignation or removal by the Board of Managers and any vacancy occurring in the office of any Officer may be filled by the Board of Managers.

(k) Written notice stating the place, day and time of every meeting of the Board of Managers and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than five (5) nor more than thirty (30) calendar days before the date of the meeting, in each case, to each Manager at his or her notice address maintained in the records of the Company and to Quantlab and Cerberus. Such further notice shall be given as may be required by Applicable Law, but meetings may be held without notice if all the members of the Board of Managers entitled to vote at the meeting are present in person or

by telephone or represented by proxy or if notice is waived in writing by those not present, either before or after the meeting.

(l) Unless otherwise provided by Applicable Law or this Agreement, the presence of Managers constituting a majority of the voting authority of the whole Board of Managers shall be necessary to constitute a quorum for the transaction of business; provided, that, so long as Cerberus may appoint a Manager pursuant to Section 7.2(b), at least one Manager appointed by Cerberus is present; provided, further that, so long as Quantlab is permitted to appoint a Manager pursuant to Section 7.2(c), at least one Manager appointed by Quantlab shall be present. At any meeting of the Board of the Managers where a quorum is present, a majority vote of the voting authority of those Managers present will constitute an act of the Board of Managers. If such quorum is not present within sixty minutes after the time appointed for such meeting, such meeting shall be adjourned and the President or acting Chairman shall reschedule the meeting to be held not fewer than two nor more than ten days thereafter. If such meeting is rescheduled two consecutive times, then those Managers who are present or represented by proxy at the second such rescheduled meeting shall constitute a valid quorum for all purposes hereunder; provided that written notice of any rescheduled meeting shall have been delivered to all Managers at least two days prior to the date of such rescheduled meeting. Notwithstanding any provision to the contrary contained herein, interested Managers may be counted in determining the presence of a quorum at a meeting of the Board of Managers or of a committee that authorizes any interested party contract or transaction.

(m) Each Manager shall be entitled to one vote on each matter to be voted on by the Board of Managers; provided, however, that, in the event of a tie with respect to any action or vote of the Board of Managers, the Manager appointed by Cloyd Industries, if any, will be deemed to have not cast a vote with respect to such matter; provided, further, that at any time and from time to time, Cerberus or Quantlab may, by written notice to the Company, elect to appoint to the Board of Managers less than the number of Managers that Cerberus or Quantlab, as the case may be, is permitted to appoint pursuant to Section 7.2(b) or 7.2(c) and increase the number of votes held by one or more of the Managers appointed by Cerberus or Quantlab, as the case may be, so that the aggregate number of votes held by all Managers appointed by Cerberus or Quantlab, as the case may be, equals the number of Managers that Cerberus or Quantlab, as the case may be, is entitled to appoint pursuant to Section 7.2(b) or 7.2(c). Effective upon the notice the preceding sentence, the size of the Board of Managers shall not be reduced but instead any position on the Board of Managers not filled shall remain vacant, subject to the rights of Cerberus or Quantlab, as the case may be, to subsequently fill such vacant position in accordance with Section 7.2(b) or Section 7.2(c), as applicable. Cerberus may, at any time and from time to time, revoke any election made pursuant to this Section 7.2(l).

(n) Any action required or permitted to be taken at any meeting of the Board of Managers may be taken without a meeting by the unanimous written consent of the Board of Managers. Any such written consents shall be filed with the minutes of the proceedings of the Board of Managers.

(o) The Company shall reimburse Managers for reasonable travel expenses related to attendance by such Manager at each regular or special meeting of the Board of Managers and reasonable professional fees (including, but not limited to, legal fees) and other

out-of-pocket fees and expenses incurred by a Manager in connection with drafting or negotiating any amendment of this Agreement or in connection with the interpretation of the provisions of this Agreement in the ordinary course of business of the Company. All reimbursement of such out-of-pocket fees or expenses shall be made promptly upon presentation by a Manager to the Company of the statement in connection therewith (the "Expense Statement"), but in no event later than thirty (30) days following the presentment of such Expense Statement.

(p) Each Member agrees to vote, or cause to be voted, all Class A Units owned by such Member, or over which such Member has voting control, from time to time and at all time, in whatsoever manner as shall be necessary to ensure that the provisions of this Section 7.2 are fulfilled; provided that with respect to AFF so long as it is in receivership, such voting agreement shall be subject to the fiduciary obligations of AFF's receiver.

(q) From and after the date hereof until an IPO, and for so long as PDQ owns in the aggregate at least 50% of the Units and Warrant Securities owned by it as of the date hereof, PDQ shall have the right to appoint one (1) non-voting observer of the Board of Managers, which non-voting observer shall receive notice of any meeting of the Board of Managers, and any regularly prepared materials presented to the Board of Managers, as if such non-voting observer were a Manager; provided, that such non-voting observer shall not have the right to attend meetings of the Board of Managers or receive materials to the extent, in the reasonable judgment of the Board of Managers, doing so would be reasonably expected to prejudice the Company or any attorney-client privilege of the Company or if such non-voting observer engages in activity that is competitive to the business of the Company and its Subsidiaries. For the avoidance of doubt, if, on any date, PDQ owns less than 50% of the Units and Warrant Securities that it owned as of the date hereof, from and after such date, PDQ shall no longer have the right to appoint any non-voting observer of the Board of Managers pursuant to this Section 7.2(q).

7.3 Committees of the Board. The Board of Managers may establish formal committees of the Board of Managers, from time to time, and such committees shall include one individual designated by Cerberus (so long as Cerberus has the right to designate a Manger pursuant to Section 7.2(b)) and one individual designated by Quantlab (so long as Quantlab has the right to designate a Manger pursuant to Section 7.2(c)).

7.4 Indemnification of Managers and Officers; Exculpation of Managers.

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by Applicable Law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a Manager or an Officer of the Company (each, an "Indemnitee"), against expenses (including reasonable and documented attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; provided, however, no Indemnitee shall be entitled to indemnification under this Section 7.4 if his actions were in bad faith, were not done with reasonable belief that such actions were in the best

interests of the Company or with respect to a criminal act, to the extent such Indemnitee had reasonable cause to believe his conduct was unlawful.

(b) The Company shall pay or reimburse expenses (including reasonable and documented attorneys' fees) incurred by an Indemnitee in defending a civil, criminal, administrative or investigative action, suit or proceeding brought by a party (including on behalf of the Company) against the Indemnitee in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Company as authorized in this Section 7.4.

(c) Notwithstanding any other provision of this Section 7.4, the Company shall pay or reimburse expenses (including reasonable and documented attorneys' fees) incurred by an Indemnitee in connection with such Indemnitee's appearance as a witness or other participant on behalf of the Company in a proceeding involving or affecting the Company at a time when the Indemnitee is not a named defendant or respondent in the proceeding.

(d) The right of indemnification and reimbursement provided in this Section 7.4 shall be in addition to any rights to which an Indemnitee may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each Indemnitee.

(e) The rights to indemnification and reimbursement provided for in this Section 7.4 may be satisfied only out of the assets of the Company and none of the Members shall be personally liable for any claim for indemnification or reimbursement under this Section 7.4.

(f) No Manager shall be personally liable for monetary damages to any other Manager, the Company, any Member, any Warrant Holder or any other Person for any loss suffered by the Company or any monetary damages for breach of fiduciary duties as a Manager except, subject to Section 7.1(c) (i) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (ii) for any transaction from which such Manager derived an improper personal benefit. The Managers shall not be liable for the good faith exercise of business judgment. Any Manager may consult with counsel and accountants and any Member, Manager, Warrant Holder, Officer, employee, committee or other professional expert in respect of Company affairs, and provided the Manager acts in good faith reliance upon the advice or opinion of such counsel or accountants or other persons, the Manager shall not be liable for any loss suffered by the Company in reliance thereon. No Manager shall be (i) personally liable for the debts, obligations or liabilities of the Company, including any such debts, obligations or liabilities arising under a judgment, decree or order of a court; (ii) obligated to cure any deficit in any Capital Account; (iii) required to return all or any portion of any Capital Contribution; or (iv) required to lend any funds to the Company.

(g) The Company shall obtain and cause at all times to be maintained in effect a policy of Managers', directors' and officers' liability insurance in a scope and amount customary for a business of its nature that provides coverage to current and former Managers, directors and officers of the Company.

(h) The provisions of this Section 7.4 shall be a contract between the Company and each Indemnitee pursuant to which the Company and each such Indemnitee intend to be legally bound. Notwithstanding anything to the contrary in this Agreement, no amendment, modification or repeal of this Section 7.4 that adversely affects the rights of an Indemnitee to indemnification under this Section 7.4 for a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Indemnitee's entitlement to indemnification under this Section 7.4 without the Indemnitee's prior written consent. The provisions of this Section 7.4 shall survive the dissolution, liquidation, winding up and termination of the Company.

7.5 Other Businesses of Investor Members. Each of the Members and the Company (i) acknowledges that the Investor Members and their respective Affiliates own, and from time to time may acquire and own, one or more Subsidiaries or investments in one or more other entities (such Subsidiaries and entities, collectively, "Related Companies") that are direct competitors of, or that otherwise may have interests that do or could conflict with those of the Company or a Subsidiary or Affiliate of the Company, and (ii) agree that (A) the enjoyment, exercise and enforcement of the rights, interests, privileges, powers and benefits granted or available to the Investor Members and their respective Affiliates under this Agreement shall not be in any manner reduced, diminished, affected or impaired, and the obligations of the Investor Members or their respective Affiliates or Subsidiaries under this Agreement shall not be in any manner augmented or increased, by reason of any act, circumstance, occurrence or event arising from or in any respect relating to (x) the ownership by a Member or any of its Affiliates or Subsidiaries of any interest in any Related Company, (y) the affiliation of any Related Company with an Investor Member or any of its Affiliates or Subsidiaries or (z) any action taken or omitted by an Investor Member or any of its Affiliates or Subsidiaries in respect of any Related Company or in respect of any Affiliate or Subsidiary of any Investor Member that directly or indirectly owns any interest in any Related Company, (B) neither any Investor Member nor any of its Affiliates or Subsidiaries is, and none shall by reason of such ownership or any such action become, subject to any fiduciary duty to the Company or any of its Subsidiaries or Affiliates, (C) none of the duties imposed on an Investor Member or any of their respective Affiliates, whether by contract or law, do or shall limit or impair the right of an Investor Member and their respective Affiliates and Subsidiaries (including each Related Company) lawfully to compete with the Company and its Affiliates and Subsidiaries as if the Investor Members were not a party to this Agreement and (D) the Investor Members and their respective Affiliates and Subsidiaries (including each Related Company) are not and shall not be obligated to disclose to the Company or any of its Subsidiaries and Affiliates any information related to their respective businesses or opportunities, including acquisition opportunities, or to refrain from or in any respect to be restricted in competing against the Company or any of its Subsidiaries or Affiliates in any such business or as to any such opportunities.

7.6 Certain Actions. The Company shall not take any action that would cause the Company to become an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

7.7 Matters Requiring Cerberus's and Quantlab's Approval. (a) Subject to Section 7.7(b), the Company shall not, and shall not permit any of its Subsidiaries to, without the affirmative vote or written consent of each of Quantlab and Cerberus:

(i) enter into any line of business other than a Permitted Business;

(ii) increase the authorized number of Class B Incentive Units reserved for issuance to employees, officers, directors or managers of, or consultants or advisors to, the Company or any of its Subsidiaries to an amount that is greater than the Incentive Cap or otherwise modify the Incentive Cap;

(iii) amend or otherwise modify this Agreement (other than Schedule A or Schedule B hereto upon a Transfer or issuance of Units in accordance with this Agreement) or any other similar constitutional document of any Subsidiary;

(iv) effect an Acquisition other than a Qualifying Acquisition;

(v) effect an IPO;

(vi) incur or guarantee any Indebtedness;

(vii) create a security interest over the assets of the Company or any of its Subsidiaries other than in connection with any permitted borrowing and permitted liens with respect to the Loan, Intercreditor Agreement or Financing Agreement;

(viii) modify or otherwise amend or waive the terms of the Loan, Intercreditor Agreement, Financing Agreement or any related agreement;

(ix) admit any Additional Members or issue any Equity Securities, other than Class B Incentive Units up the Incentive Cap, Warrant Exercised Securities or as required pursuant to Section 3.12 or Section 3.13;

(x) make any distributions to the Members, other than as required pursuant to Section 4.3(a)(ii)(A) or Section 4.3(d);

(xi) repurchase or redeem any Units of the Company;

(xii) dismiss or replace the Chief Executive Officer of the Company;

(xiii) effect any merger, consolidation, or similar business combination in which the Company is not the surviving entity;

(xiv) enter directly or indirectly into a joint venture with any Person other than a Subsidiary of the Company

(xv) enter into or consummate any Asset Sale or Sale Transaction, except a sale or transfer of all or substantially all of the Company's assets in an enforcement action by Cerberus as first lien lender outside of bankruptcy so long as such

sale or transfer (i) is conducted in accordance with applicable provisions of the UCC regarding the disposition of collateral and (ii) is not a consensual UCC §9-620 transfer to Cerberus in satisfaction of Cerberus's debt, unless such consensual transfer is approved by a majority of the independent directors of the board or (b) to a sale or transfer governed by and in accordance with the Intercreditor Agreement following the commencement of an insolvency proceeding of the Company.

(xvi) engage in any transactions with the Company or any of its Subsidiaries, on the one hand, and any Affiliates of the Company (other than its Subsidiaries), Members, officers or Managers (or any Affiliates of such Members, officers, or Managers), on the other hand, except, in each case, transactions in the ordinary course of business and on arms' length terms;

(xvii) make any determination to dissolve the Company and wind up its affairs pursuant to Section 11.1(a) or Section 11.1(c); or

(xviii) enter into any contract or agreement obligating, or otherwise commit, the Company or any of its Subsidiaries to take any action prohibited by (i) through (xvii) above.

(b) In the event that Cerberus has a Fully Diluted Interest constituting less than a 15% of the Fully Diluted Aggregate Interest, Cerberus shall no longer have the right of consent pursuant to Section 7.7(a). In the event that Quantlab has a Fully Diluted Interest constituting less than a 15% of the Fully Diluted Aggregate Interest, Quantlab shall no longer have the right of consent pursuant to Section 7.7(a) or 7.7(c).

(c) Subject to Section 7.7(b), the Company shall not, and shall not permit any of its Subsidiaries to, without the affirmative vote or written consent of Quantlab make any optional prepayment of any portion of the Loan at any time prior to the earlier of (x) the occurrence of the Additional Advance Fall-Away Event (as defined in the Subordinated Note, as in effect on the date hereof) and (y) the date on which all Additional Advances outstanding under the Subordinated Note have been prepaid or otherwise repaid in full and there remain no unfunded outstanding commitments to make Additional Advances under the Subordinated Note.

ARTICLE VIII

DISPOSITION OF UNITS; OTHER RIGHTS

8.1 Restrictions on Transfer.

(a) Each Member and Warrant Holder agrees with each other Member and Warrant Holder and the Company that such Member or Warrant Holder shall not Transfer all or any portion of Units or Warrant Securities held by such Member or Warrant Holder except as hereinafter expressly permitted in this Article VIII (each such permitted Transfer, a "Permitted Transfer"), subject to Section 8.1(g). Any purported Transfer in violation of this Agreement shall be null and void ab initio and the Company shall not recognize any such Transfer or accord to any purported Transferee any rights as a Member or Warrant Holder.

(b) From and after the date hereof until any IPO, no Class A Member may Transfer any or all of its Class A Units and no Warrant Holder may Transfer any or all of its Warrant Securities, except in accordance with Sections 8.3 or 8.4; provided, that this prohibition shall not apply to any Transfer (i) to a Permitted Transferee, (ii) effected with the approval of the Board of Managers (not to be unreasonably withheld, conditioned or delayed), (iii) that is part of a Permitted Quantlab Warrant Sale, (iv) that is part of a Quantlab Buy-out Transaction or (v) with respect to the PDQ Warrant, to the acquirer of at least a majority of the voting equity in PDQ or substantially all of the assets of PDQ (whether by merger, consolidation or sale). For the avoidance of doubt, any Transfer pursuant to Section 8.1(b)(iii) shall be subject to Section 8.1(g). To the extent that any Manager has been a designated by the Class A Member proposing to Transfer its Class A Units or Warrant Securities pursuant to Section 8.1(b)(ii), such Manager shall not be permitted to vote on the approval of such Transfer pursuant to Section 8.1(b)(ii).

(c) No Class B Member may Transfer any or all of its Class B Incentive Units unless (i) such Transfer is pursuant to Section 8.3 or Section 8.4 and subject, in each case, to Section 8.1(g) or (ii) the Board of Managers provides its prior written consent to such Transfer; provided that, in the case of clause (ii), the Transferring Class B Member shall be required to pay any and all fees, costs, expenses and Taxes of the Company, the Class A Members and any of their respective Affiliates directly or indirectly associated with, resulting from or arising out of, such Transfer.

(d) Notwithstanding anything to the contrary herein, no transfer of Units or Warrant Securities may be made unless (i) the transferor Member or Warrant Holder, as the case may be, provides the Company with at least ten (10) Business Days advance written notice of its intent to make such Transfer, (ii) the Board of Managers does not, within the ten (10) Business Day period following the Company's receipt of the transferor's notice pursuant to clause (i) of this Section 8.1(d), make a determination that such Transfer is prohibited pursuant to Section 8.1(e) or Section 8.1(f), and (iii) each transferee of the Units (other than a transferee in a Registered Sale or in a transfer pursuant to Section 8.4) or Warrant Securities shall agree to be bound by all of the provisions this Agreement applicable to the Transferring Member or Warrant Holder pursuant to a Joinder and shall deliver the Joinder to the Company. Upon becoming a party to this Agreement, such transferee shall be deemed a Member or Warrant Holder for purposes of this Agreement, shall be entitled to the rights of a Member or Warrant Holder with respect to such Units or Warrant Securities and the applicable Schedule to this Agreement shall be amended accordingly.

(e) In no event shall any Member Transfer any Units or Warrant Securities to any Person which may be deemed a competitor of the Company (as reasonably determined by the Board of Managers), except pursuant to Section 8.4.

(f) Notwithstanding anything to the contrary herein, no Transfer shall be permitted if the Board of Managers determines such Transfer (A) would cause a violation of Applicable Law, (B) requires the prior approval of a Governmental Entity under Applicable Law unless such approval is obtained prior to such Transfer, (C) would cause the Company to be required to register as an "investment company" under the 1940 Act, (D) would cause the Company to be treated as a publicly traded partnership for United States federal tax purposes, or (E) would have a material and adverse effect on the Company as a result of any requirement of

Applicable Law that becomes or that may become applicable in connection with or as a result of such Transfer.

(g) Notwithstanding anything to the contrary herein, no Transfer of Units or Warrant Securities shall be permitted unless each of Quantlab and Cerberus has consented to such Transfer, such consent not to be unreasonably withheld; provided that such consent may only be reasonably withheld by Quantlab or Cerberus to the extent that Quantlab or Cerberus, as the case may be, determines, in its commercially reasonable discretion, that the Transferee is (i) a strategic competitor of Quantlab, Cerberus or the Company or (ii) a person that would be subject to the "Bad Actor" disqualification under Rule 506(d) of the Securities Act of 1933, as amended; provided, that (x) in the event that Cerberus has a Fully Diluted Interest constituting less than a 15% of the Fully Diluted Aggregate Interest, Cerberus shall no longer have the right of consent pursuant to this Section 8.1(g) and, (y) in the event that Quantlab has a Fully Diluted Interest constituting less than a 15% of the Fully Diluted Aggregate Interest, Quantlab shall no longer have the right of consent pursuant to this Section 8.1(g).

(h) The terms of this Section 8.1 shall apply *mutatis mutandis* to any indirect Transfer of Units (including any Transfer of any interest in any Blocker Entity).

8.2 Quantlab Buy-out Transaction. Upon (x) the exercise by Quantlab and/or any other Subordinated Lender of its option, in connection with a Quantlab Buy-out Transaction, to purchase, pursuant to Section 11 of the Intercreditor Agreement (or any successor provision thereto) and subject to the terms and conditions thereof, all, but not less than all, of the Fully Diluted Interests of Cerberus and any other Senior Lender and (y) the payment of any purchase price in accordance with the Intercreditor Agreement, the Units and Warrant Securities comprising the Fully Diluted Interests of Cerberus and any other Senior Lender shall be automatically deemed Transferred to Quantlab and/or such other Subordinated Lender (or any Person designated by Quantlab or such other Subordinated Lender) in accordance with the terms of the Intercreditor Agreement and the Company shall update Annex A hereto accordingly, and Cerberus and each other Senior Lender hereby agree to execute any documents required to effect and evidence such Transfer.

8.3 Right of Co-Sale. (a) Subject to Section 8.1(g), (i) from and after the date hereof until any IPO, (A) if any Member or Investor Warrant Holder or group of Members or Investor Warrant Holders with an aggregate Fully Diluted Interest Percentage of at least 25% (each, a "Transferring Holder") proposes to Transfer any or all of its Units or Warrant Securities (other than to a Permitted Transferee or pursuant to Section 8.1(b)) then the Transferring Holder shall deliver a written notice (the "Co-Sale Notice") to each Investor Member or Investor Warrant Holder who is not a Transferring Holder (each such other Investor Member or Investor Warrant Holder, a "Co-Sale Participant") at least thirty (30) calendar days prior to making the Transfer of such Units or Warrant Securities (the "Co-Sale Units"), specifying in reasonable detail (A) the identity of the proposed Transferee(s), (B) the number and class of Units or Warrant Securities represented by the Co-Sale Units proposed to be Transferred (on an as converted basis as of such date), (C) the proposed purchase price per Co-Sale Unit to be paid by the proposed Transferee(s), and (D) the other terms and conditions of the Transfer. Each Co-Sale Participant may elect to participate in the contemplated Transfer at the same price per Co-Sale Unit and on the same terms and conditions by delivering written notice to the Transferring Holder within fifteen (15)

calendar days after delivery of the Co-Sale Notice, which notice shall specify the Co-Sale Units that such Co-Sale Participant desires to include in such proposed Transfer. If none of the Co-Sale Participants gives such notice prior to the expiration of the fifteen- (15) calendar day period for giving such notice, then the Transferring Holder may Transfer Units or Warrant Securities to the third party purchaser set forth in the Co-Sale Notice on terms and conditions that are no more favorable to the Transferring Holder than those set forth in the Co-Sale Notice at any time within a period ending on the later to occur of (i) ninety (90) calendar days following the expiration of such period for giving notice or (ii) if a definitive agreement to Transfer Units or Warrant Securities is entered into by the Transferring Holder within such ninety- (90) calendar day period, five (5) Business Days after the date on which all applicable approvals and consents of Governmental Entities with respect to such proposed Transfer have been obtained and any applicable waiting periods under Applicable Law have expired or been terminated. Each of the Company, the Investor Members and the Investor Warrant Holders hereby agree to use their respective commercially reasonable efforts to promptly obtain, or to assist the Company, any other Investor Member and any other Investor Warrant Holder in promptly obtaining, all of the foregoing approvals and consents and to take such other actions as may be reasonably requested by the Company, any other Investor Member and any other Investor Warrant Holder in connection with such Transfer. Any such Units or Warrant Securities not Transferred by the Transferring Holder during such time period or if any such agreement to Transfer is terminated shall again be subject to the provisions of this Section 8.3 prior to any subsequent Transfer. If any Co-Sale Participant has elected to participate in such Transfer, then each such Co-Sale Participant shall be entitled to sell in the contemplated Transfer, at the same price and on the same terms as the Transferring Holder, (1) an amount of Units equal to the product obtained by multiplying (I) the aggregate number of Units and Warrant Securities to be sold in the Transfer, by (II) a fraction (x) the numerator of which is the number of Units owned by such Co-Sale Participant, and (y) the denominator of which is the aggregate number of Units and Warrant Securities owned by the Transferring Holder and all participating Co-Sale Participants and (2) an amount of Warrant Securities equal to the product obtained by multiplying (I) the aggregate number of Units and Warrant Securities to be sold in the Transfer, by (II) a fraction (x) the numerator of which is the number of Warrant Securities owned by such Co-Sale Participant, and (y) the denominator of which is the aggregate number of Units and Warrant Securities owned by the Transferring Holder and all participating Co-Sale Participants.

(b) Each Co-Sale Participant Transferring Units pursuant to this Section 8.3 shall pay its own costs of any sale and a pro rata share (based on the relative consideration to be received in respect of the Units and Warrant Securities to be sold) of the expenses incurred by the Transferring Holder in connection with such Transfer and shall be obligated to provide the same representations, warranties, covenants and agreements that the Transferring Holder agrees to provide in connection with such Transfer; provided that no Investor Member shall be required to provide any non-competition or similar covenant. Each Co-Sale Participant Transferring Units or Warrant Securities pursuant to this Section 8.3 shall be obligated to join severally on a pro rata basis (based on the relative consideration to be received in respect of the Units or Warrant Securities to be sold) in any indemnification or other obligations that the Transferring Holder agrees to provide or undertake in connection with such Transfer (including any representations given with respect to the business and condition of the Company and/or its Subsidiaries, but other than any such obligations that relate specifically to a particular Co-Sale Participant, such as indemnification with respect to representations and warranties given by a

Co-Sale Participant regarding such Co-Sale Participant's non-contravention, title and ownership of, and authority to sell, such Units or Warrant Securities); provided that the liability resulting from any such indemnity or similar obligation shall be several and not joint as among the indemnitors, shall be proportionate (based on the relative consideration to be received in respect of the Units or Warrant Securities to be sold), and shall not exceed the net proceeds to such Co-Sale Participant in connection with such Transfer. Furthermore, such Co-Sale Participant shall have no liability for any indemnity or similar obligation arising out of any breach of any representation, warranty, covenant or agreement by the Transferring Holder or any other Co-Sale Participant.

(c) The election by an eligible Investor Member or Investor Warrant Holder not to exercise its rights under this Section 8.3 in any one instance shall not affect the rights of such Investor Member or Investor Warrant Holder as to any subsequent proposed Transfer.

(d) Notwithstanding anything to the contrary in this Agreement, and if elected by Cerberus (in its sole discretion), Cerberus shall be entitled to participate in any contemplated Transfer under this Section 8.3 indirectly through the sale of its equity interests in one or more Blocker Entities (and on the same terms as if it were selling such number of Units or Warrant Securities permitted under this Section 8.3).

(e) Each other Class A Member shall be deemed to be a "Co-Sale Participant" pursuant to this Section 8.3 and shall have all of the same rights and privileges of the Co-Sale Participants under this Section 8.3 if any Member or Investor Warrant Holder or group of Members or Investor Warrant Holders with an aggregate Fully Diluted Interest Percentage of at least 50% proposes to Transfer any or all of its or their Units or Warrant Securities (other than to a Permitted Transferee or pursuant to Section 8.1(b)).

8.4 Drag Along Rights. Subject to Section 7.7, Section 8.1(g) and the liquidation preference in Section 4.3(a)(ii)(A), in the event that Members and Warrant Holders that collectively have an aggregate Fully Diluted Interest Percentage of more than 50% (each such Member or Warrant Holder, a "Drag Along Person") approve a Sale Transaction, the Drag Along Person may require that each other Member Transfer all of its Units and each other Warrant Holder Transfer all of its Warrant Securities in such Sale Transaction; provided, however, that Cerberus, as determined in its sole discretion, shall be permitted to Transfer its interests in one or more Blocker Entities rather than the Units or Warrant Securities held by any such Blocker Entity. Each Member and Warrant Holder shall receive in such Sale Transaction in respect of its Units or Warrant Securities (or in the case of Cerberus and if Cerberus so elects, the Blocker Entities), its pro rata portion of the entire consideration to be received by all the Members and Warrant Holders, collectively, in or following the Sale Transaction (with such pro rata portions determined on an as exercised basis and as if such consideration were distributed in accordance with Section 4.3). If any Member or Warrant Holder is given an option as to the form of consideration to be received in such Sale Transaction in respect of its Units or Warrant Securities (or in the case of Cerberus, and if Cerberus so elects, the Blocker Entities), all Members and Warrant Holder participating in such Sale Transaction will be given the same option pro rata based on their share in the entire consideration to be received by Members and Warrant Holders, collectively, in o following the Sale Transaction. The Drag Along Member(s) shall notify the other Members at least ten (10) Business Days in advance of entering into a definitive agreement

in connection with a proposed Sale Transaction. In any such agreement, the Members will be required to make substantially the same representations, warranties, covenants, indemnities and agreements as the Drag Along Member agrees to make in connection with the proposed Sale Transaction, provided that (A) such agreements shall be customary for the kind of transactions contemplated; (B) no Member or Warrant Holder shall be required to make representations and warranties in connection with such Sale Transaction other than customary representations and warranties, on a several and not joint basis, regarding the power and authority of that Member or Warrant Holder to engage in such Sale Transaction, the receipt of appropriate corporate or similar authorization, the absence of any consents or approvals applicable to such Member (other than those which have been obtained), and that such Member or Warrant Holder has good and marketable title to its Units or Warrant Securities, free and clear of all liens, claims and other encumbrances, and if the Members or Warrant Holders have any indemnification obligations in connection with such Sale Transaction, the terms and conditions of each Member's or Warrant Holder's indemnification obligation, if any, shall be several, shall be proportionate (based on the relative consideration to be received in respect of the Units or Warrant Securities to be sold) but shall not, in each case, exceed the net proceeds to such Member or Warrant Holder in connection with such Sale Transaction and shall exclude any liability for any breach of any representation, warranty, covenant or agreement by any other Member; and (C) no Member shall have to sign any non-competition or similar agreement purporting to bind its Affiliates.

8.5 Legends. If at any time Units are represented by certificates, then each such certificate shall have stamped, printed or typed thereon, in addition to any other legend required by law, the following legends:

> THIS CERTIFICATE AND THE UNITS REPRESENTED HEREBY ARE SUBJECT TO AND SHALL BE TRANSFERABLE ONLY IN ACCORDANCE WITH THE PROVISIONS OF A CERTAIN AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF ETC GLOBAL GROUP LLC DATED AS OF JULY [●], 2017, AMONG THE MEMBERS AND WARRANT HOLDERS NAMED THEREIN, A COPY OF WHICH IS ON FILE AT THE OFFICE OF THE COMPANY.
>
> THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER (THE "ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, HYPOTHECATED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE UNITS UNDER THE ACT AND APPLICABLE STATE LAWS OR AN EXEMPTION THEREFROM.

8.6 Effect of Transfer. Following a Transfer of any Units that is permitted under this Article VIII, the Transferee of such Units shall be treated as having made all of the Capital

Contributions in respect of, and received all of the Distributions received in respect of, such Units, and shall receive all allocations and Distributions under Article IV and Article XI in respect of such Units as if such Transferee were a Member.

8.7 IPO Tax Considerations. The Board of Managers will use commercially reasonable efforts to structure an IPO in a tax-efficient manner, including by permitting the merger or transfer of any Blocker Entity to the IPO vehicle.

ARTICLE IX

RECORDS; CERTAIN TAX MATTERS

9.1 Records to be Maintained. The Company shall maintain at its principal office separate books of account for the Company which shall reflect a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the operation of the Company business.

9.2 Financial Statements.

(a) Prior to the IPO, at the request of any Investor Member or Investor Warrant Holder, the Company agrees to furnish to such Investor Member or Investor Warrant Holder:

(i) within ninety (90) calendar days after the end of each fiscal quarter, unaudited balance sheets and income statements as of the end of such period, together with statements of retained earnings and cash flow for such period; and

(ii) within one hundred eighty (180) calendar days after the end of each fiscal year, audited balance sheets and an income statement as of the end of such fiscal year together with statements of retained earnings and cash flow for such period.

9.3 Tax Returns; Information. The Company shall arrange for the preparation of all income and other tax returns of the Company and shall cause the same to be filed in a timely manner. As soon as practicable following the end of each Fiscal Year, the Company shall furnish to each Member and Warrant Holder a copy of each such return, together with any schedules or other information each Member or Warrant Holder may require in connection with such Member's or Warrant Holder's own tax affairs. Without limiting the generality of the foregoing, as soon as practicable, but in any event within one hundred eighty (180) calendar days following the end of each Fiscal Year, the Company shall deliver to each Person who was a Member (as determined for U.S. federal tax purposes) during such Fiscal Year an IRS Form 1065, Schedule K-1 for such Fiscal Year. If the Company is unable to provide such Schedules K-1 for a Fiscal Year by April 15 of the year following such Fiscal Year, the Company shall use commercially reasonable efforts to provide to the Members information and estimates sufficient to enable the Members to file their U.S. federal income tax returns and/or to pay estimated taxes in respect thereof.

9.4 Tax Matters Member; Tax Matters.

(a) Cerberus (or such person as may be designated by the Board of Managers) shall be designated on the Company's annual U.S. Federal information tax return, the "tax matters partner" of the Company for purposes of Section 6231(a)(7) of the Code in respect of tax years beginning in or before 2017 and Cerberus (or such person as may be designated by the Board of Managers) shall be designated, in the manner prescribed by applicable law, as the "partnership representative" of the Company for purposes of Section 6223(a) of the Code in respect of Company audits relating to tax returns filed for taxable years beginning after 2017 (collectively, the "Tax Matters Member"). In the event the Company shall be the subject of an income tax audit by any federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Member shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member thereof; provided, that the Tax Matters Member shall not be entitled to settle any tax liability with a taxing authority, agree to a notice of final partnership adjustment, make a request for an administrative adjustment or take any other action with respect to tax matters without the prior written consent of the Board of Managers; provided, further, that the Tax Matters Member shall not take any action under this Section 9.4 that would reasonably be expected to have an unreasonable disproportionate and adverse impact on any Member (assuming that all Members are subject to tax at the effective tax rate applicable to an individual who is a resident of the United States, that each Member has no items of taxable income or loss other than those arising as a result of such Member's interest in the Company and without taking into account any general disproportionate effect resulting from any difference in each Member's relative Percentage Interest in the Company) without such Member's consent. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Company. With respect to any tax audit of the Company in respect of taxable years of the Company beginning after 2017, the Tax Matters Member and the Board of Managers shall exercise commercially reasonable efforts to minimize the financial burden of any audit adjustment to the Company and its Members. In connection with the foregoing, the Tax Matters Member and the Board of Managers will use commercially reasonable efforts to (i) cause the Company to elect the alternative procedure under Section 6226 of the Code (as in effect for taxable years beginning after 2017), or (ii) otherwise minimize the financial burden of any imputed underpayment (within the meaning of Section 6225(b) of the Code, as in effect for taxable years beginning after 2017) on the Company and its Members and allocate any such imputed payment among the current or former Members of the Company for the "reviewed year" to which the payment relates in a manner that reflects the current or former Members' respective interests in the Company for that year. In the event that the Tax Matters Member causes the Company to make an election pursuant to clause (i) above, the Members agree to make commercially reasonable efforts to cooperate with the Tax Matters Member as necessary to effectuate such election.

(b) The Company agrees to indemnify the Tax Matters Member for any claims made against it in its capacity as Tax Matters Member. All out-of-pocket costs and expenses reasonably incurred by the Tax Matters Member shall be borne by the Company. Such costs and expenses shall include, without limitation, fees of third party attorneys, tax professionals, accountants, appraisers and experts, filing fees and reasonable out-of-pocket costs and expenses.

(c) The Board of Managers shall have the authority to make, or cause to be made, all relevant decisions relating to tax matters of the Company, including any tax elections, provided that the Board of Managers shall not make, or cause to be made, any tax election that would have an unreasonable disproportionate and adverse impact on any Member (assuming that all Members are subject to tax at the effective tax rate applicable to an individual who is a resident of the United States, that each Member has no items of taxable income or loss other than those arising as a result of such Member's interest in the Company and without taking into account any general disproportionate effect resulting from any difference in each Member's relative Percentage Interest in the Company) without such Member's consent. Notwithstanding the foregoing, it is the intention of the Members that the Company be treated as a partnership for U.S. federal (and applicable state and local) tax purposes, and no Member, Manager or other representative of the Company shall make any election to the contrary.

(d) The Members hereby agree that the Warrant Holders will not be treated as partners of the Company for U.S. federal income tax purposes in respect of their Warrants unless and until such Warrants have been exercised.

ARTICLE X

WITHDRAWALS; ACTION FOR PARTITION

10.1 Waiver of Partition. No Member shall, either directly or indirectly, take any action to require partition, file a bill for Company accounting or appraisement of the Company or of any of its assets or properties or cause the sale of any Company property; and, notwithstanding any provisions of Applicable Law to the contrary, each Member (and each of his, her or its legal representatives, successors, or assigns) hereby irrevocably waives any and all rights it may have to maintain any action for partition or to compel any sale with respect to his, her or its Units, or with respect to any assets or properties of the Company, except as expressly provided in this Agreement.

10.2 Covenant Not to Withdraw or Dissolve. Notwithstanding any provision of the Act, but except as otherwise provided in this Agreement, each Member hereby covenants and agrees that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby, each Member hereby covenants and agrees not to (a) withdraw or attempt to withdraw from the Company, (b) exercise any power under the Act to dissolve the Company, (c) petition for judicial dissolution of the Company, or (d) demand a return of such Member's contributions or profits (or a bond or other security for the return of such contributions or profits) without the unanimous consent of the Members.

ARTICLE XI

DISSOLUTION AND WINDING UP

11.1 Dissolution; Liquidating Events. The Company shall be dissolved and its affairs wound up upon the first to occur of the following events:

(a) the determination of the Board of Managers, subject to Section 7.7(a), to do so;

(b) the sale of substantially all of the assets of the Company, subject to Section 7.7(a); and

(c) the Company ceasing to have any Members.

11.2 Effect of Dissolution. Upon dissolution, the Company shall cease carrying on business but shall not be terminated and shall wind up current Company business. The Company shall continue in existence until the winding up of the affairs of the Company is completed and the certificate of cancellation has been issued by the Secretary of State of the State of Delaware with respect to the Certificate of Formation.Distribution of Assets on Dissolution. Upon the winding up of the Company, the Company's assets shall be distributed:

(a) to creditors, including Members or Warrant Holders who are creditors to the extent required by Applicable Law, in satisfaction of Company liabilities; and

(b) to Members in accordance with Section 4.3. Such Distributions shall be in cash or property (which shall be distributed proportionately) or partly in both, as determined by the Board of Managers.

11.4 Winding Up and Certificate of Cancellation. The winding up of the Company shall be completed when all debts of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, a certificate of cancellation shall be delivered to the Secretary of State of the State of Delaware for filing. The certificate of cancellation shall set forth the information required by the Act.

AMENDMENT

12.1 Amendment. This Agreement and any other similar constitutional document of any Subsidiary may not be amended without the prior approval of the Board of Managers and, to the extent applicable, the approval of Quantlab in accordance with Section 7.7 and, to the extent applicable, Cerberus in accordance with Section 7.7; provided, that any such amendment that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Member or Warrant Holder, group of Members or Warrant Holder relative to the comparable rights and obligations of the other Members and Warrant Holders shall require the prior written consent of such adversely affected Member or Warrant Holders; provided, further, that any such amendment to Section 8.3(e) shall require the prior written consent of a majority of the Minority Members; provided further, that any amendment to Section

4.3(a)(ii)(A), Section 4.3(a)(ii)(C)(i) or (ii), the definitions set forth in Section 4.3(a), Section 4.3(d), Section 4.3(e), the last sentence of Section 3.4 or any other amendment that adversely affects the rights and obligations of the Class A-2 Members solely in their capacity as a Class A-2 Member (and not in their capacity as a Class A Member) shall require the consent of holders of a majority of the Class A-2 Units. Notwithstanding anything to the contrary set forth in this Section 12.1, upon a Transfer or issuance of Units in accordance with this Agreement, Schedule A or Schedule B, as applicable, shall be amended, without the consent of any Member or Warrant Holder being required, to reflect such Transfer or issuance and the Transferee shall be admitted as a Member to the extent such Transferee is not already a Member. No amendment or waiver shall be made if such amendment or waiver would adversely affect the rights of the holders of Warrant Securities differently than the rights of the holders of the corresponding Warrant Exercised Security without the approval or written consent of each of Cerberus and Quantlab (or their respective Permitted Transferees). Furthermore, no amendment or waiver shall be made to any provision under which any Warrant Holder has rights without the approval or written consent of each of Cerberus or Quantlab (or their respective Permitted Transferees).

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Confidentiality. In furtherance of and not in limitation of any other similar agreement such Member or Warrant Holder may have with the Company, each Member and Warrant Holder agrees that all Confidential Information shall be kept confidential by such Member or Warrant Holder and shall not be disclosed by such Member or Warrant Holder in any manner whatsoever; provided, however, that (i) any of such Confidential Information may be disclosed by a Member or Warrant Holder to its managers, officers, employees and authorized representatives (including its attorneys, accountants, consultants, bankers and financial advisors) and each Member or Warrant Holder that is a corporation, limited partnership or limited liability company may disclose such Confidential Information to any former stockholders, partners or members who retained an economic interest in such Member or Warrant Holder, and to any current or proposed stockholders, member, partner, limited partner, general partner or management company of such Member or Warrant Holder (or any employee, attorney, accountant, consultant, banker or financial advisor or representative of any of the foregoing) (collectively, for purposes of this Section 13.1, "Representatives"), who need to be provided such Confidential Information to assist such Member or Warrant Holder in evaluating its investment, each of which Representatives shall be bound by the provisions of this Section 13.1 and such Member or Warrant Holder shall be responsible for any breach of this provision by any such Representative, (ii) any disclosure of Confidential Information may be made by a Member or a Warrant Holder to its stockholders, partners or members to comply with such Member's obligations under its organizational documents each of which stockholders, partners or members shall be bound by the provisions of this Section 13.1 and such Member or Warrant Holder shall be responsible for any breach of this provision by any such stockholder, partner or member, (iii) any disclosure of Confidential Information may be made by a Member or a Warrant Holder or its respective Representatives to the extent the Company consents in writing, (iv) Confidential Information may be disclosed by any Member or Warrant Holder or its Representative to the extent that the Member or Warrant Holder or its respective Representative has received advice from its counsel that it is legally compelled to do so, provided that, prior to making such

disclosure, the Member, Warrant Holder or Representative, as the case may be, uses commercially reasonable efforts to preserve the confidentiality of the Confidential Information, including consulting with the Board of Managers regarding such disclosure and, if reasonably requested by the Board of Managers, assisting the Company, at the Company's expense, in seeking a protective order to prevent the requested disclosure, and provided further that the Member, Warrant Holder or Representative, as the case may be, discloses only that portion of the Confidential Information as is, based on the advice of its counsel, legally required, and (v) so long as AFF is in receivership or any of its equity holders are in receivership, any of such Confidential Information may be disclosed by the receiver in the course of the performance of receivership's obligations or as required by court order, the Securities and Exchange Commission or by law.

13.2 Acknowledgement and Release. As a material inducement to Cerberus and its Affiliates agreeing to provide the Loan and to the Quantlab Entities agreeing to exchange their existing senior secured indebtedness for the Subordinated Note and provide additional advances to the Company pursuant to the Subordinated Note, each Member hereby acknowledges and agrees that, (i) as of the date hereof, it has no Interests in the Company other than as set forth in this Agreement and as reflected on Schedule A or Schedule B, as applicable, and has no rights to any profits, distributions or allocations except as explicitly set forth herein, (ii) any agreement in existence as of the date hereof purporting to grant or outline ownership of, or right to acquire, Former Common Units or Former Preferred Units to such Member in the Company other than this Agreement or the Warrants is hereby terminated and of no further force or effect and (iii) except for the AFF Excluded Items, each Existing Member, for itself and its respective successors and assigns, hereby absolutely, irrevocably and unconditionally releases, waives and forever discharges the Company and each of the Quantlab Entities and each of their respective current and former officers, directors, managers, other equityholders, agents and representatives, and each of their respective heirs and Affiliates (each, a "Discharged Party"), from any and all actions, causes of action, liabilities, obligations, judgments, claims, counterclaims, judgments, rights, fees, damages, debts, and expenses (inclusive of attorneys' fees), demands, defenses, objections, in each case, of any kind whatsoever, in equity or otherwise, known or unknown, that such Existing Member may now have, may have had, or may ever have, including, without limitation, any claims under federal, state, local or foreign law, in each case, arising out of or in connection with any Former Common Units or Former Preferred Units, any right to acquire Former Common Units or Former Preferred Units, or their ownership of, or rights resulting from holding, Former Common Units or Former Preferred Units, and does hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any Discharged Party, by reason of or in connection with any of the foregoing matters, claims or causes of action; provided that, for the avoidance of doubt, the terms of this Section 13.2 shall not apply to or affect in any way, or constitute a release, waiver or discharge by the Quantlab Entities in respect of any commercial contracts or other commercial agreements or debt instruments in effect at the date hereof or from time to time between any of the Quantlab Entities or their Affiliates and the Company or any of its Affiliates, except that the Quantlab Entities hereby release, waive and discharge any claim in respect of an existing or past breach by the Company or any of its Affiliates under any such agreement that is known (after due inquiry) by the Quantlab Entities at the date hereof. "AFF Excluded Items" mean any and all actions, causes of action, liabilities, obligations, judgments and claims, in equity or otherwise, known or unknown that AFF may have against any SEC

Defendant or Andy MacRitchie. "SEC Defendant" mean each of Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC, Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis. Each Member acknowledges that, with respect to the matters set forth in this Section 13.2, it waives the application of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

13.3 Structure of Sale Transaction. For so long as any of the Investor Units are outstanding, or reserved for issuance, the Company shall consult with the Investor Members regarding the structure of any Sale Transaction and shall comply with the Investor Member's reasonable requests regarding such structuring, which shall include the requirement that such purchaser or group of purchasers acquire the Blocker Entities. The Parties agree that the Board of Managers will use commercially reasonable efforts to structure any IPO in a tax-efficient manner, including by allowing the holders of interests in a Blocker Entity to Transfer their interests to the entity (which may be the Company or any Subsidiary of the Company, as applicable) the common stock of which is being offered pursuant to the IPO.

13.4 Appointment of the Board of Managers as Attorney-in-Fact. Each Member hereby irrevocably constitutes, appoints and empowers the Board of Managers and each of its duly authorized officers, managers, agents, successors and assignees, with full power of substitution and resubstitution, as its true and lawful attorney-in-fact, in its name, place and stead and for its use and benefit, to execute, certify, acknowledge, file, record and swear to all instruments, agreements and documents necessary or advisable to carrying out the following:

(a) any and all amendments to this Agreement that may be permitted or required by this Agreement or the Act, including amendments required to effect the admission of a substitute Member pursuant to and as permitted by Article VIII or to revoke any admission of a Member which is prohibited by this Agreement;

(b) any certificate of cancellation of the Company's Certificate of Formation that may be necessary upon the termination of the Company;

(c) any business certificate, certificate of formation, amendment thereto, or other instrument or document of any kind necessary to accomplish the Permitted Business;

(d) all other instruments required by law to be filed on behalf of the Company and that are not inconsistent with this Agreement.

The Board of Managers shall not take action as an attorney-in-fact for any Member which would in any way increase the liability of the Member beyond the liability expressly set forth in this Agreement or the Loan Documents, or which would diminish the substantive rights of such Member.

Each Member authorizes such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever necessary or advisable to be done in and about the foregoing as fully as such Member might or could do if personally present, and hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. The appointment by each Member of the Board of Managers with full power of substitution and resubstitution, as aforesaid, as attorneys-in-fact shall be deemed to be a power coupled with an interest, shall be irrevocable and shall survive and not be affected by the dissolution, bankruptcy, death, incapacity or dissolution of any Member, in recognition of the fact that each of the Members under this Agreement shall be relying upon the power of the Board of Managers and such officers, managers, agents, successors and assigns to act as contemplated by this Agreement in such filing and other action by it on behalf of the Company. The foregoing power of attorney shall survive the Transfer by any Member of the whole or any part of its Interests hereunder. The foregoing power of attorney may be exercised by such attorney-in-fact by listing all of the Members executing any agreement, certificate, instrument or document with the single signature of such attorney-in-fact acting as attorney-in-fact for all of them.

13.5 Entire Agreement. This Agreement represents the entire agreement among the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements and understandings with respect to the subject matter hereof, including the Original Agreement.

13.6 Termination of Prior Agreements. All prior agreements among the Members with respect to or relating to their capacity as a Member or their rights with respect to their Units or equity interests in the Company, including the Members Rights Agreement, dated as of November 27, 2013 are hereby terminated and shall be of no further force or effect.

13.7 Loans by Members. With the exception of the Loan, loans by Members to the Company shall be made voluntarily and only upon the approval of the Board of Managers with the consent of Quantlab and Cerberus pursuant to Section 7.7.

13.8 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under any partnership or limited partnership act. The Members do not intend to be partners one to another, or partners as to any third party, other than for tax purposes as set forth herein. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

13.9 Rights Of Creditors and Third Parties under Agreement. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any other agreement between the Company and any Member with respect to any Capital Contribution or otherwise except (i) to the extent provided by applicable statute and (ii)

each Indemnitee shall have the right to enforce the obligations of the Company solely with respect to Section 7.4.

13.10 No Employment or Service Contract. Nothing in this Agreement shall confer upon any Member or Warrant Holder any right to continue in the service of the Company or any of its Affiliates for any period of time or restrict in any way the rights of the Company or any of its Affiliates to terminate any such Member's or Warrant Holder's employment or directorship at any time for any reason whatsoever, with or without cause.

13.11 No Waiver. The failure of the Company or any Member or any Warrant Holder (or assignees of the Company, any Member or any Warrant Holder) in any instance to exercise any rights granted under this Agreement shall not constitute a waiver of any other rights that may subsequently arise under the provisions of this Agreement or any other agreement between or among the Company and any Member on the one hand or the Company and any Warrant Holder on the other hand. No waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

13.12 Notices. Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and sent by personal delivery, overnight courier, or facsimile (other than in the case of any payment), addressed as reflected on Schedule A or Schedule B, as applicable, or as specified in the applicable Warrant (or in the case of any such notice, payment, demand or communication to the Company, to:

ETC Equity Holder LLC
c/o Cerberus Capital Management, L.P.
875 Third Avenue
New York, NY 10022
Attention: Chris Daniello
Fax No.: (212) 284-7906

with copies to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Richard A. Presutti
Fax No.: (212) 593-5955

Quantlab Investments LLC
4200 Montrose Bld, Suite 200
Houston, TX 7006
Attention: Bruce Eames
Telephone: (713) 333-5460
Email: beames@quantlab.com

Sullivan & Cromwell LLP
125 Broad Street

New York, New York 10004
Attention: Jared Fishman
Fax No.: (212) 291-9280

or to such other address as such Person may from time to time specify by notice to the Members. Any such notice, payment, demand or communication sent by personal delivery or overnight courier shall be deemed to be delivered, given, and received as of the date so delivered, and any such notice, demand or communication sent by facsimile shall be deemed to be delivered, given, and received when transmitted and confirmation received.Binding Effect. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and Warrant Holders and their respective successors and permitted transferees and assigns.

13.14 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13.15 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

13.16 Incorporation by Reference. Each Schedule and Exhibit attached to this Agreement and referred to herein is incorporated in this Agreement by reference and made a part hereof as if fully set forth herein.

13.17 Further Action. Each Member and Warrant Holder agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

13.18 Remedies. Each Member and Warrant Holder agrees and acknowledges that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that the Company and each Member and Warrant Holder will have the right to seek injunctive relief or a decree of specific performance, in addition to all of its rights and remedies at law or in equity, to enforce the provisions of this Agreement.

13.19 Governing Law; Waiver of Jury Trial. The laws of the State of Delaware (without reference to its choice of laws principles) shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Members. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR CONTROVERSY DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS

AGREEMENT. EACH PARTY HERETO CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION OR CONTROVERSY, SEEK TO ENFORCE THE FOREGOING WAIVER; (II) EACH PARTY HERETO UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (III) EACH PARTY HERETO MAKES THIS WAIVER VOLUNTARILY; AND (IV) EACH PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.17.

13.20 Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members and Warrant Holders had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

13.21 Consent to Jurisdiction. Except as otherwise provided in Section 4.3(d), each party hereto hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York or the United States of America located in New York City, Borough of Manhattan, for any , suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby and agrees not to commence any action, suit or proceeding relating hereto except in such courts, and further agrees that service of any process, summons, notice or document by United States registered or certified mail shall be effective service of process for any action, suit or proceeding brought in any court. Each of the Parties hereby irrevocably and unconditionally waives any objection to personal jurisdiction and the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby, in the courts of the State of New York or the United States of America located in New York City, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding anything to the contrary in this Agreement, so long as AFF or any of its equity holders are in receivership, each party to this Agreement irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Oregon ("Oregon Court") for any action or proceeding arising out of or relating to this Agreement that involves AFF and each party irrevocably agrees that all claims with respect to such action or proceeding shall be heard and determined in such Oregon Court.

13.22 Assignment. No rights, interests or obligations of any Member or Warrant Holder herein may be assigned without the prior approval of the Board of Managers except for Transfers in compliance with Article VIII; provided, however, that no assignment of this Agreement or any rights or obligations hereunder shall be made without the assignee, as a condition to such assignment, assuming in writing its assignor's obligations under this Agreement, to the extent applicable to such assignment.

13.23 Cessation of Rights and Obligations. Notwithstanding anything in this Agreement to the contrary, in the event that a Member ceases to hold any Units, such Member shall cease to have any rights or obligations under any provision of this Agreement (other than the provisions of Articles VI and XIII, which shall continue in full force and effect in accordance with the terms thereof). The provisions of Articles VI and XIII shall survive and continue in full

force in accordance with their terms, notwithstanding any termination of this Agreement or dissolution of the Company.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Limited Liability Company Operating Agreement of the Company as of the date first above written.

COMPANY

By:_____
Name:
Title:

[MEMBERS]
[Entity]

By:_____
Name:
Title:

[Individuals]

_____
Name

[WARRANT HOLDERS]

By:_____
Name:
Title:

SCHEDULE A

SCHEDULE A - CLASS A MEMBERS; CAPITAL CONTRIBUTIONS
As of July [ ], 2017

Member; Address	Number of Class A-1 Units	Number Class A-2 Units	Number of Class A-3 Units	Capital Contribution	Total Class A Units
Aequitas ETC Founder's Fund, LLC		1,760,000			1,760,000
Cloyd Industries, LLC			1,531,738		1,531,738
CCM Capital Opportunities Fund, LP			1,478,502		1,478,502
Capstone Partners, LP			514,434		514,434
Cloyd Partners, Inc.			386,780		386,780
Quantlab Investments, LLC			122,609[1]		122,609
Capozza Living Trust, dtd 04/15/2001			117,668		117,668
Rabsy Collins			116,231		116,231
Elijah Mills			116,231		116,231
Athena Capital Research, LLC			115,384		115,384
Barnaby Hatchman			83,804		83,804

[1] This number may increase to reflect a net, cashless exercise of Quantlab's warrants prior to the Closing. These warrants are exercisable for approximately 2% of the Company's currently outstanding units.

Hook Capital Ventures, LLC			76,923		76,923
Jane Buhain			28,346		28,346
Anthony Russo			10,000		10,000
Christopher Eikenberry			3,846		3,846
Jeffrey Goldman			3,846		3,846
ETC Equity Holder LLC	10				10
TOTAL	10	1,760,000	4,706,342		6,466,352

SCHEDULE B

SCHEDULE B - CLASS B MEMBERS
As of July [ ], 2017

Member; Address	Number of Class B Units	Distribution Threshold

TOTAL

EXHIBIT A

Independent Appraisers

Raymond James & Associates, Inc.

Houlihan Lokey Howard & Zukin Capital, Inc.

Duff & Phelps

N M Rothschild & Sons Ltd.

Jefferies & Company, Inc.

EXHIBIT B

Instrument of Accession

The undersigned, _____, as a condition precedent to becoming the owner or holder of record of ___ ( ) [description of securities], of ETC Global Group LLC, a Delaware limited liability company ("Company"), hereby agrees to become a member of the Company, party to and bound by that certain Amended and Restated Limited Liability Company Operating Agreement of the Company, dated as of July [●], 2017 (the "LLC Agreement"), by and among the Company and the members and warrant holders of the Company party thereto. This Instrument of Accession shall take effect and shall become an integral part of the LLC Agreement immediately upon execution and delivery to the Company of this Instrument.

IN WITNESS WHEREOF, this Instrument of Accession has been duly executed by the undersigned as of the date below written.

[For Entities]

_____

By: _____
Name:
Title:

[For Individuals]

_____
Name:

Address: _____
_____

Date: _____

Accepted:
ETC GLOBAL GROUP LLC

By: _____
Name:
Title:

Date:_____

EXHIBIT C

Initial Board of Managers

Cerberus Members' Appointees:
Chris Daniello

Quantlab Members' Appointees:

Consent and Instrument of Accession

The undersigned, Aequitas ETC Founders Fund LLC, a Delaware limited liability company ("AFF"), is a holder of 1,760,000 units of Series A Preferred Membership Interest (the "GG Preferred Units") in ETC Global Group LLC, a Delaware limited liability company ("ETCGG"). ETCGG is undertaking a debt financing to be provided by an affiliate of Cerberus Capital Management, L.P. ("Cerberus") and other lenders (together with Cerberus, collectively, the "Senior Lenders"), a restructuring of its existing secured debt obligations owing to Quantlab Investments, LLC and certain affiliates thereof (collectively, "Quantlab"), and a recapitalization that will result in, among other things, an exchange of the existing membership units in ETCGG held by AFF for newly denominated Class A-2 Units, the distribution of a $200,000 promissory note and an amendment and restatement of ETCGG's existing Limited Liability Company Agreement (the "Original LLC Agreement") (the foregoing transactions, together with the related transactions described in the definitive documentation to evidence and govern the foregoing transactions, collectively, the "Restructuring").

The receiver for Aequitas Investment Management, LLC, AFF's manager (the "Receiver") has been generally apprised of the terms of, and the constituent parties to, the Restructuring, and has asked the questions the undersigned has deemed necessary and received satisfactory answers to make a determination to execute and deliver this written consent and instrument of accession (the "Consent"). The Receiver, on behalf of AFF, has reviewed a draft of the amendment and restatement of the Original LLC Agreement, substantially in the form attached hereto as Exhibit A (the "A&R LLC Agreement") and certain other draft documents intended to effect the Restructuring, including the advancement of funds and commitments to advance funds contemplated thereby, but not all documents.

Now, therefore, the Receiver, on behalf of AFF, deems it to be in the best interest of AFF to agree to the following:

AFF hereby consents to the Restructuring, including the incurrence of the debt and liens by ETCGG and certain of its subsidiaries, and provision by the Senior Lenders and Quantlab of advanced funds and commitments to advance further funds, in each case associated with the Restructuring.

AFF hereby consents to and votes all of the GG Preferred Units in favor of the A&R LLC Agreement such that the Original LLC Agreement shall, effective upon, or immediately prior to, the closing of the Restructuring, be amended and restated substantially in the form of the A&R LLC Agreement, any changes of which will be approved by AFF. The A&R LLC Agreement shall be deemed effective immediately prior to the initial advances made by Cerberus and by Quantlab in connection with the Restructuring or as the Board of Managers of ETCGG resolve by a majority vote. AFF acknowledges, consents, and agrees that, upon the effectiveness of the A&R LLC Agreement, all prior operating agreements and other documents affecting the rights, duties and obligations of members of ETCGG and its management (including, for the avoidance of doubt, the Members Rights Agreement) shall be null and void and of no force and effect, and will, in each case, be replaced in their entirety by the provisions of the A&R LLC Agreement and warrants executed in connection therewith.

AFF hereby consents and agrees to the conversion of all of the GG Preferred Units held by AFF immediately prior to the effectiveness of the A&R LLC Agreement into 1,760,000 Class A-2 Units of ETCGG immediately upon, and effective automatically with the effectiveness of the A&R LLC Agreement (the "New A Units") plus a $200,000 promissory note, in substantially the form attached as Exhibit B ("Promissory Note"). ETCGG and AFF acknowledge and agree that AFF shall, upon such conversion, be benefitted by the preference allocations and payments contemplated by the Class A-2 Units as set forth in the A&R LLC Agreement and the Promissory Note. ETCGG and AFF further acknowledge and agree that ETCGG is issuing the Promissory Note to AFF as part of the consideration for the conversion of the GG Preferred Units. AFF is contemporaneously assigning its rights as the holder of the Promissory Note to Aequitas Investment Management, LLC ("AIM") in satisfaction of certain payment obligations owed by AFF to AIM. ETCGG consents to such assignment and acknowledges that AIM is the holder of the Promissory Note. As a condition precedent to becoming the owner or holder of record of the New A Units of ETCGG, AFF hereby agrees to become a member of ETCGG, a party to and be bound by the A&R LLC Agreement, by and among ETCGG and the members and warrant holders of ETCGG party thereto. This Consent shall take effect and shall become an integral part of the A&R LLC Agreement immediately upon execution and delivery to ETCGG of this Consent. In the event of a conflict between this Consent and the A&R LLC Agreement, the A&R LLC Agreement shall control.

This Consent may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, each other party will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

[Signature Page Follows]

IN WITNESS WHEREOF, this Consent has been duly executed by the undersigned as of the date below written.

Aequitas ETC Founders Fund, LLC

By: Aequitas Investment Management, LLC, Manager

By: _____
Name: Ronald Greenspan
Title: Receiver for Aequitas Investment Management, LLC

Date: _____

Accepted:
ETC GLOBAL GROUP LLC

By: _____
Name:
Title:

Date:_____

Exhibit A
A&R LLC Agreement

[See Attached]

[OMITTED]

Exhibit B
Promissory Note

[See Attached]

PROMISSORY NOTE

$200,000.00 July [ ], 2017

This Promissory Note ("**Note**") is made by ETC Global Group, LLC, a Delaware limited liability company ("**Maker**") in favor of Aequitas Investment Management, LLC, an Oregon limited liability comapny ("**Holder**"). This Note was originally issued to Aequitas ETC Founders Fund, LLC, a Delaware limited liability company ("**AEFF**"), as the original holder. AEFF subsequently assigned it to Holder pursuant to a Termination and Resignation Agreement dated on or about the same day as this Note.

1. **Payment**. Maker promises to pay to the order of Holder in immediately available funds the principal amount of $200,000.00 in six consecutive monthly payments of principal. The first payment is due on August [ ], 2017 and subsequent payments are due on the same day of each following month until January [ ], 2018, at which time the unpaid principal amount is due in its entirety. Each of the first five monthly payments will equal $16,666.67 and the sixth and final monthly payment will equal $116,666.65. Except as provided in Section 2, Maker will not owe interest on the unpaid principal amount.

2. **Default Interest Rate**. On and after an event of default under this Note, Maker will pay interest on the unpaid principal amount at an annualized rate of 9% starting from the date such event of default occurred. Interest will be calculated on the basis of a year of 360 days.

3. **Application of Payments**. All payments under this Note will be applied first to any costs and expenses due to Holder, then to accrued interest to date of payment, and then to the unpaid principal amount.

4. **Place of Payments**. All payments under this Note will be made to Holder at 5300 Meadows Road, Suite 300, Lake Oswego, OR 97035 or any other address that Holder may designate by notice to Maker.

5. **Prepayments**. Maker may prepay a part or all of the unpaid principal amount at any time. Excess payments or prepayments will not be credited as future scheduled payments required by this Note.

6. **Events of Default**. Each of the following is an event of default under this Note:

(a) Maker fails to make any payment required by this Note when due;

(b) Maker:

(1) makes an assignment for the benefit of creditors;

(2) commences a voluntary bankruptcy case;

(3) files a petition or answer seeking for Maker any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or rule;

(4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against Maker in any proceeding of this nature; or

(5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of Maker or of all or any substantial part of Maker's properties;

(c) an involuntary bankruptcy case against Maker is commenced and is not dismissed on or before the 120th day after the commencement of the case; and

(d) a court:

(1) adjudicates Maker as bankrupt or insolvent; or

(2) appoints, without Maker's consent, a trustee, receiver, or liquidator either of Maker or of all or any substantial part of Maker's properties that is not: (A) vacated or stayed on or before the 90th day after appointment; or (B) vacated on or before the 90th day after expiration of a stay.

7. Remedies. On and after an event of default under this Note, Holder may exercise the following remedies, which are cumulative and which may be exercised singularly or concurrently:

(a) upon notice to Maker, the right to accelerate the due dates under this Note so that the unpaid principal amount, together with accrued interest, is immediately due in its entirety;

(b) any remedy available to Holder under any agreement guaranteeing or securing the performance of any of the obligations of Maker under this Note or any of the obligations of any guarantor of this Note; and

(c) any other remedy available to Holder at law or in equity.

8. Time of Essence. Time is of the essence with respect to all dates and time periods in this Note.

9. Binding Effect. This Note will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

10. Amendment. This Note may be amended only by a written document signed by the party against whom enforcement is sought.

11. Waiver.

(a) Maker waives demand, presentment for payment, notice of dishonor or nonpayment, protest, notice of protest, and lack of diligence in collection, and agrees that Holder may extend or postpone the due date of any payment required by this Note without affecting Maker's liability.

(b) No waiver will be binding on Holder unless it is in writing and signed by Holder. Holder's waiver of a breach of a provision of this Note will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

12. Severability. If a provision of this Note is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Note will not be impaired.

13. **Governing Law**. This Note is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Note.

14. **Venue**. Any action, suit, or proceeding arising out of the subject matter of this Note will be litigated in the United States District Court for the District of Oregon (the "**Oregon Court**"). Maker consents and submits to the jurisdiction of the Oregon Court. Maker and Holder irrevocably agrees that all claims with respect to any action or proceeding arising from or related to this Note will be heard and determined in the Oregon Court.

15. **Attorney's Fees**. If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Note, or otherwise in connection with the subject matter of this Note, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

16. **Costs and Expenses**. If an event of default under this Note occurs and Holder does not institute any arbitration, action, suit, or proceeding, Maker will pay to Holder, upon Holder's demand, all reasonable costs and expenses, including but not limited to attorney's fees and collection fees, incurred by Holder in attempting to collect the indebtedness evidenced by this Note.

Maker:

ETC Global Group, LLC

By: _____

Name: _____

Title: _____

Execution Version

FIRST AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

AEQUITAS ETC FOUNDERS FUND, LLC

Dated Effective as of July [____], 2017

THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE SECURITIES OFFERED HEREBY MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

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Exhibit A – Definitions
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FIRST AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF AEQUITAS ETC FOUNDERS FUND, LLC

This First Amended and Restated Limited Liability Company Agreement (this "**Agreement**") is made effective as of July [___], 2017, by and among Aaron D. Maurer, as the Special Member and Manager, and the Members of Aequitas ETC Founders Fund, LLC, a Delaware limited liability company (the "**Fund**" or the "**Company**"), and shall be valid and binding with respect to such Persons, as well as such other Persons as may be admitted as Members of the Fund from time to time hereafter, in accordance with the Act and on the following terms and conditions. This Agreement amends and restates in its entirety the Fund's prior limited liability company agreement dated September 23, 2011 ("**Prior Limited Liability Company Agreement**").

Recitals

A. The Fund's sole investment consists of a limited liability company interest in ETC Global Group, LLC, a Delaware limited liability company ("**ETC**").

B. Under the terms of the Prior Limited Liability Company Agreement, Aequitas Investment Management, LLC, an Oregon limited liability company ("**AIM**"), was the Special Member and Manager of the Fund.

C. Concurrent with the execution of this Agreement, AIM and the Fund are entering into a Termination and Resignation Agreement pursuant to which Aaron D. Maurer will replace AIM as the Manager of the Fund and AIM will transfer and assign its Interest as the Special Member to Mr. Maurer.

D. The Fund and Aequitas Commercial Finance, LLC, an Oregon limited liability company ("**ACF**") have also agreed to provide ACF with certain rights to require the Fund to redeem its Interests in exchange for certain payments as more specifically set forth in Section 15 of this Agreement.

E. On March 10, 2016, the Securities and Exchange Commission filed an action captioned SEC v. Aequitas Management, LLC et al. (Case No. 3:16-cv-00438-PK) alleging defendants violated the federal securities laws. On April 14, 2016, the United States District Court for the District of Oregon (the "**Oregon Court**") entered a Final Order Appointing Receiver (the "**Final Receiver Order**"), appointing Ronald F. Greenspan (the "**Receiver**") as receiver for the entity defendants named in the action and certain of their subsidiaries and affiliates. AIM and the Fund are subject to the powers of the Receiver as set forth in the Final Receiver Order.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is agreed as follows:

1. Organization.

1.1 **Formation.** A Certificate of Formation was filed on July 27, 2011, in the Office of the Secretary of State of Delaware in accordance with and pursuant to the Act.

1.2 **Name and Place of Business.** The name of the Company shall be Aequitas ETC Founders Fund, LLC, and its principal place of business shall be [redacted]. The Manager in its discretion may change the Fund's name or principal place of business or establish additional places of business of the Company. The Manager shall promptly notify the Members of any change in the Company's address.

1.3 **Business and Purposes of the Fund.**

1.3.1 The purposes of the Fund are to (a) hold securities of ETC, and, as determined necessary or appropriate by the Manager in its sole discretion, to hold cash, cash equivalents and money market funds (the "Portfolio Assets"), and (b) engage in other activities related or incidental thereto and any lawful business not prohibited by the Act.

1.3.2 **Specific Powers.** In furtherance of the foregoing, the Fund is authorized:

(a) To purchase, participate in, hold, trade, sell, service, liquidate and exchange Portfolio Assets. The Fund is further authorized to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Portfolio Assets held by the Fund, including voting rights.

(b) To enter into, make and perform all contracts and other undertakings, and to engage in all activities and transactions, as the Manager, in its sole discretion, may deem necessary or advisable to the carrying out of the foregoing objectives and purposes.

1.4 **Term.** The term of the Fund shall commence on the effectiveness of the Certificate of Formation and shall continue until the Fund is dissolved and liquidated in accordance with Section 12 of this Agreement.

1.5 **Required Filings.** The Manager shall execute, acknowledge, file, record and/or publish such certificates and documents as may be required by this Agreement or by law in connection with the formation and operation of the Fund.

1.6 **Registered Office and Registered Agent.** The Fund's initial registered office and initial registered agent are set forth in the Certificate of Formation. The registered office and registered agent may be changed from time to time by the Manager by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.7 **Fiscal Year.** The fiscal year of the Fund shall end on December 31 of each calendar year.

1.8 **Definitions.** In addition to any other defined terms in this Agreement, certain capitalized terms have the meanings given in attached Exhibit A.

2. Outside Activities.

2.1 **Personal Investments and Other Activities.** Except as otherwise specifically provided in this Agreement, there shall be no restrictions on the personal investment or other activities of the Manager and the Special Member. The Manager and the Special Member and their Affiliates may receive compensation and fees from lenders, borrowers and investment entities with which the Fund does business, and may receive distributions, compensation and fees from entities in which the Fund invests.

2.2 **Non-Participation.** The relationship hereby established among the Fund, the Manager, the Special Member and the Members shall not entitle the Fund, the Manager, the Special Member or any Member to participate in or to receive the benefits of any other activity, business or ventures of any other Member, the Manager, the Special Member or any of their respective Affiliates. None of the Manager, the Special Member, any Member or any of their respective Affiliates shall be prevented from engaging in any activities that are competitive with those of the Fund.

3. Capitalization and Financing.

3.1 **Capital Contributions.**

3.1.1 **Special Member.** The Company's original Special Member, AIM, contributed the sum of $1,000 in cash on or about the date of the Prior Limited Liability Company Agreement in exchange for one Interest in the Fund. AIM subsequently transferred and assigned its Interest in the Fund to Aaron D. Maurer as of the effective date of this Agreement.

3.1.2 **Interests.** Each Interest in the Fund represents a Limited Liability Company Membership Interest in the Fund. The Interests will not be evidenced by certificates, unless otherwise determined by the Manager in its discretion. The Fund is hereby authorized to sell and issue Interests, and to admit the Persons who acquire such Interests as Members, only if approved by the Manager, the Special Member and a Member Majority.

3.1.3 **Subscription Agreement: Payment of Capital Contribution.** Any Person desiring to acquire Interests and become a Member shall tender to the Fund a Subscription Agreement specifying the number of Interests desired, together with the Subscription Payment. The Manager may accept a Subscription Agreement only after the Manager's acceptance of the Subscription Agreement has been approved and authorized by the Special Member and a Member Majority. Upon the acceptance of a Subscription Agreement, the accompanying Subscription Payment shall become the subscribing Person's initial Capital Contribution, and such Subscribing Person shall be thereupon admitted as a Member. In no event shall the Fund have more than 499 Members at any one time; provided, however, that in the Manager's sole discretion the number of Members may be limited at any one time to not more than 100 Members. The Manager may utilize Capital Contributions to fund purchases of Portfolio Assets, to pay Fund expenses or reserves therefor and to make distributions or redemptions or withdrawals of Interests.

3.1.4 **Plan Members.** In the sole discretion of the Fund, the following entities may be admitted to the Fund as a Member or otherwise be permitted to purchase or hold any Interests: (a) "employee benefit plans" (as defined in Section 3(3) of the Employee Retirement Income Security of 1974, as amended ("**ERISA**")), whether or not subject to ERISA, (b) "plans" (as defined in Section 4975(e)(l) of the Code), whether or not subject to Section 4975 of the Code and (c) entities that would be deemed to be holding the assets of such an "employee benefit plan" or "plan" for purposes of ERISA and/or Section 4975 of the Code (such plans or entities are collectively referred to herein as "**Retirement Plans**"). At no time may Retirement Plans that are subject to ERISA own, in the aggregate, twenty five percent (25%) or more of the total value of the Interests then outstanding.

3.1.5 **Admission of a Member.** A Person subscribing for Interests shall be admitted as a Member of the Fund on the first day of the month following the month in which the Manager accepts such Person's Subscription Agreement, unless admitted earlier by the Manager in its sole discretion. To the extent required by law, the Manager shall amend this Agreement and take such other action as the Manager deems necessary or appropriate promptly after acceptance of a subscription for Interests to reflect the admission of the relevant Person to the Fund as a Member.

3.1.6 **Liabilities of Members.**

(a) Neither the Special Member nor any Member shall be required to make any additional Capital Contributions to the Fund and neither the Special Member nor any Member shall be liable for the debts, liabilities, contracts or any other obligations of the Fund, nor shall the Special Member or Members be required to lend any funds to the Fund or to repay to the Fund, the Special Member, any Member, any creditor of the Fund or any other Person, any portion or all of any deficit balance in the Special Member's or a Member's Capital Account.

(b) To the maximum extent permitted by the Act, no Special Member or Member shall be liable for Fund obligations in excess of the Capital Contributions made or required to be made by the Special Member or such Member, plus, to the extent required under the Act and this Agreement, the Special Member's or such Member's share of undistributed profits of the Fund and, to the extent required under the Act and this Agreement, amounts previously distributed to the Special Member or such Member.

3.2 **Members and Interests.** The identity of the Special Member and of the Members as of the date hereof, together with their respective Capital Contributions, is set forth on attached Exhibit B. Such Exhibit may be amended from time to time by the Manager to reflect additional and withdrawn Members and any change in the Special Member.

4. Allocation of Tax Items.

4.1 **Generally.** After giving effect to the special allocations contained in Section 4.2:

4.1.1 Net Income for the current Fiscal Year will be allocated in the following order and priority:

(a) First, to offset the most recent allocations of Net Loss under Section 4.1.2(b) that have not been offset by prior allocations of Net Income under this Section 4.1.1(a) for the current and all prior Fiscal Years; and

(b) Second, to the Members (including the Special Member) in proportion to the number of Interests held by each.

4.1.2 Net Loss for the current Fiscal Year will be allocated in the following order and priority:

(a) First, to offset the most recent allocations of Net Income under Section 4.1.1(b) that have not been offset by prior allocations of Net Loss under this Section 4.1.2(a) for the current and all prior Fiscal Years; and

(b) Second, to the Members (including the Special Member) in proportion to their Capital Accounts after giving effect to all prior contributions, distributions and allocations.

4.2 **Special Allocations.** The special allocations set forth in this Section 4.2 will be made in the following order and priority:

4.2.1 **Fund Minimum Gain Chargeback.** If there is a net decrease in Fund Minimum Gain during any Fund fiscal year, the Special Member and each Member shall be specially allocated items of Fund income or gain for such year (and, if necessary, subsequent years) in an amount equal to the Special Member's and such Member's share of the net decrease in Fund Minimum Gain, determined in accordance with Treasury Regulations Section l.704-2(g)(2). This Section 4.2.1 is intended to comply with the partnership minimum gain chargeback requirement in the Treasury Regulations and shall be interpreted consistently therewith. This provision shall not apply to the extent the Special Member's and a Member's share of net decrease in Fund Minimum Gain is caused by a guaranty, refinancing or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and the Special Member or such Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced or otherwise changed debt or to the extent the Special Member or the Member makes a cash Capital Contribution to the Fund that is used to repay the Nonrecourse Debt, and the Special Member's or the Member's share of the net decrease in Fund Minimum Gain results from the repayment.

4.2.2 **Member Minimum Gain Chargeback.** If there is a net decrease in Member Minimum Gain, the Special Member or any Member with a share of that Member Minimum Gain (as determined under Treasury Regulations Section l-704-2(i)(5)) as of the beginning of the year shall be allocated items of Fund income and gain for such year (and, if necessary, subsequent years) in an amount equal to the Special Member's or such Member's share of the net decrease in Member Minimum Gain, determined in accordance with Treasury Regulations Section l .704-2(i)(5). This Section 4.2.2 shall not apply to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to conversion, refinancing or other change in a debt instrument that causes it to become partially or wholly a Nonrecourse Debt. This Section 4.2.2 is intended to

comply with the partner minimum gain chargeback requirements in the Treasury Regulations and shall be interpreted consistently therewith and applied with the restrictions attributable thereto.**Qualified Income Offset.** If the Special Member or any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1 (b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-l(b)(2)(ii)(d)(6) and such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this agreement were made without regard to this Section 4.2.3, items of Fund income and gain shall be specially allocated to the Special Member or such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustment, allocation or distribution as quickly as possible.**Gross Income Allocation.** Net Loss shall not be allocated to the Special Member or any Member to the extent such allocation would cause the Special Member or any Member to have an Adjusted Capital Account Deficit at the end of a fiscal year. If the Special Member or any Member has an Adjusted Capital Account Deficit at the end of any fiscal year, the Special Member and each such Member shall be specially allocated items of Fund gross income and gain in the amount of such Adjusted Capital Account Deficit as quickly as possible.

4.2.5 **Nonrecourse Deductions.** Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Special Member and the Members in proportion to their respective Capital Accounts.

4.2.6 **Member Nonrecourse Deductions.** Member Nonrecourse Deductions for any fiscal year shall be allocated to the Special Member and any Member who bears the economic risk of loss as set forth in Treasury Regulations Section 1.752-2 with respect to Member Nonrecourse Debt. If the Special Member and/or more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, any Member Nonrecourse Deductions attributable to that Member Nonrecourse Debt shall be allocated among the Special Member and the Members according to the ratio in which they bear the economic risk of loss.

4.2.7 **Loss Limitation.** Losses allocated under Section 4.1 will not exceed the maximum amount of Losses that may be allocated without causing any Member to have an Adjusted Deficit at the end of any Fiscal Year. If some, but not all, of the Members would have Adjusted Deficits, as a consequence of an allocation of Losses under Section 4.1, the limitation set forth in this Section 4.2.7 will be applied on a Member-by-Member basis and Losses not allocable to any Member as a result of such limitation will be allocated to the other Members in accordance with the positive balances in such Members' Capital Accounts so as to allocate the maximum permissible Losses to each Member under Treasury Regulations Section 1.704-1(b)2)(ii)(d).

4.2.8 **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Fund asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-l(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), and such gain or loss shall be specially allocated to the Special Member and the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations.

4.2.9 **Curative Allocations.** The allocations set forth in Sections 4.2.1 through 4.2.7 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. To the extent possible, all Regulatory Allocations will be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 4.2.9. Therefore, notwithstanding any allocation provision other than the Regulatory Allocations, the Manager will make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance that such party would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated under Sections 4.1.1 and 4.1.2.

4.3 **Section 704(c) Allocations.** In accordance with Code Section 704(c) and the related Treasury Regulations, income, gain, loss, and deduction with respect to any property contributed to the capital of the Fund or carried on its books for Capital Account purposes will, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Fund for federal income tax purposes and its initial fair market value for Capital Account purposes. If the value of any Fund asset is adjusted under Capital Account maintenance rules, subsequent allocations of income, gain, loss and deduction with respect to the asset will take account of any variation between the adjusted basis of the asset for federal income tax purposes and its value for Capital Account purposes in the same manner as under Code Section 704(c) and the related Regulations. Any elections or other decisions relating to such allocations will be made by the Special Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 4.3 are solely for purposes of federal, state and local income taxes and will not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income or Net Loss, other items or distributions under any provision of this Agreement.

4.4 **Recapture Income.** The portion of the Special Member's and each Member's distributive share of Net Income that is characterized as ordinary income pursuant to Section 1245 or 1250 of the Code shall be proportionate to the amount of Net Income or Net Loss which includes the corresponding depreciation deductions that were allocated to the Special Member and such Member as compared with the amount of depreciation deductions allocated to the Special Member and all Members.

4.5 **Allocation among Interests.** Except as otherwise provided in this Agreement, all Distributions and allocations made to the Interests shall be in the ratio of the number of Interests held by each Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month) to the total outstanding Interests as of such date, and except as otherwise provided in this Agreement, without regard to the number of days during such month that the Interests were held by each Member. Members who purchase Interests at different times during the Fund tax year shall be allocated Net Income and Net Loss using the monthly convention set forth in Section 4.7.

4.6 **Allocation of Fund Items.** Except as otherwise provided herein, whenever a proportionate part of Net Income or Net Loss is allocated to the Special Member or a Member, every item of income, gain, loss or deduction entering into the computation of such Net Income or Net Loss, and every item of credit or tax preference related to such allocation and applicable

to the period during which such Net Income or Net Loss was realized shall be allocated to the Special Member and the Member in the same proportion.

4.7 **Transfer.** The Net Income and Net Loss allocable with respect to a particular Interest shall be apportioned as between the transferor of such Interest and its transferee based upon the number of months of their respective ownership during the tax year in which the transfer occurs, without regard to the results of the Fund's operations during the period before or after such transfer. All transfers will be effective as of the last day of a month.

4.8 **Power of the Manager to Vary Allocations.** It is the intent of the Special Member and the Members that the Special Member's and each Member's share of Net Income and Net Loss be determined and allocated in accordance with Section 704(b) and, to the extent applicable, Section 514(c)(9) of the Code, and the provisions of this Agreement shall be so interpreted. Therefore, if the Fund is advised by the Fund's legal counsel that the allocations provided in this Section 4 are unlikely to be respected for federal income tax purposes, the Manager is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) and Section 514(c)(9) of the Code and effect the plan of allocations provided for in this Agreement.

4.9 **Consent of Special Member and Members.** The method of allocating Net Income and Net Loss as set forth in this Section 4 are hereby expressly consented to by the Special Member and each Member as a condition of becoming the Special Member and a Member.

4.10 **Withholding Obligations.**

4.10.1 If the Fund is required, as determined in good faith by the Manager, to make a payment ("**Tax Payment**") with respect to the Special Member or any Member to discharge any legal obligation of the Fund to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of the Special Member or such Member, arising as a result of the Special Member's or such Member's interest in the Fund, then, notwithstanding any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Fund to the Special Member or such Member, which loan shall bear interest at the Prime Rate and be payable upon demand or by offset to any Distribution which otherwise would be made to the Special Member or such Member.

4.10.2 If and to the extent the Fund is required to make any Tax Payment with respect to the Special Member or any Member, the Fund may elect to make payment on any loan described in Section 4.10.1 by offset to a Distribution to the Special Member or a Member, by either (a) the Special Member's or such Member's proportionate share of such Distribution shall be reduced by the amount of such Tax Payment, or (b) the Special Member or such Member shall pay to the Fund prior to such Distribution an amount of cash equal to such Tax Payment. In the event a portion of a Distribution in kind is retained by the Fund pursuant to clause (a) above, such retained asset may, in the discretion of the Manager, either (i) be distributed to the other Members (and to the Special Member if the Special Member is not subject to this Section), or (ii) be sold by the Fund to generate the cash necessary to satisfy such Tax Payment. If the asset is sold, then for purposes of income tax allocations only under this Agreement, any gain or loss

from such sale or exchange shall be allocated to the Special Member or the Member to whom the Tax Payment relates. If the asset is sold at a gain, and the Fund is required to make any Tax Payment on such gain, the Special Member or the Member to whom the gain is allocated shall pay the Fund prior to the due date of Tax Payment an amount of cash equal to such Tax Payment.

4.10.3 The Manager shall be entitled to withhold any Distribution to the Special Member and any Member to the extent the Manager believes in good faith that a Tax Payment will be required with respect to the Special Member or such Member in the future and the Manager believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

5. Distributions.

5.1 **Priorities before Liquidation.** Prior to the liquidation of the Fund, the Fund will pay or apply all available cash, from whatever source, as follows:

5.1.1 First, to pay Organizational Expenses and Operating Costs as incurred but not less often than monthly.

5.1.2 Second, the balance shall be retained by the Fund and used to distribute to Members as determined appropriate by the Manager, to pay for permitted withdrawals of Interests or held for reserves until liquidation of the Fund. If the Manager determines to distribute any available cash to the Members, distributions will be made in the following order and priority:

(a) First, to the Members (including the Special Member) in proportion to the Interests held by each until the cumulative amount distributed under this Section 5.1.2(a) for the current and all prior Fiscal Years equals the excess, if any, of the Net Income over the Net Loss for the current and all prior Fiscal Years; and

(b) Second, to the Members (including the Special Member) in proportion to and to the extent of their Capital Accounts as adjusted for all prior contributions, distributions and allocations for the current and all prior Fiscal Years.

5.2 **Holder of Record.** Distributions shall be made to the holder of record of the Interests as of the date of the Distribution.

5.3 **Limitation upon Distributions.** No Distribution shall be made to Members if the Distribution is prohibited by the Act, the Code, any applicable regulation or any court decree.

5.4 **Reserves; Adjustments for Certain Future Events.** Appropriate reserves may be created, accrued and charged against Net Assets and proportionately against Capital Accounts for contingent liabilities, such reserves to be in the amount which the Manager deems necessary or appropriate. The Manager may increase or reduce any such reserve from time to time by such amounts as the Manager deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may be charged or credited, as appropriate, to the Capital Accounts of those parties who are Members at the time when such reserve is created, increased, or

decreased, as the case may be, or alternatively may be charged or credited to those parties who were Members at the time of the act or omission giving rise to the contingent liability for which the reserve was established by the Manager.

5.5 **Additional Distribution Provisions.** The Manager may, in its sole discretion, distribute Portfolio Assets or any interest therein or other non-cash assets to the Special Member and the Members in kind at such time or times as the Manager determines, including upon the dissolution of the Fund. At the request in writing of the Special Member or a Member, the Manager may, in its discretion, distribute Portfolio Assets or other non-cash assets to the Special Member or such Member in lieu of cash. The Manager shall notify the Special Member and the other Members if any Distribution of non-cash assets is made to the Special Member or a Member in accordance with this Section 5.5. Any non-cash assets distributed shall be valued at their Fair Value at the time of Distribution and such assets shall be deemed to have been sold at such value and the proceeds of such sale shall be deemed to have been distributed to the Members who receive them for all purposes of this Agreement. Any Distributions of securities shall be in compliance with any applicable securities laws.

6. No Compensation for the Manager.

6.1 **No Management Fee.** The Manager will not receive from the Fund any management fee or other form of compensation for the Manager's services to the Fund.

6.2 **Organizational Expenses and Operating Costs.** The Fund shall pay directly, or reimburse the Manager or its Affiliates, as the case may be, for all reasonable Organizational Expenses and Operating Costs.

7. Authority and Responsibilities of the Manager.

7.1 **Management.** The business and affairs of the Fund shall be managed solely by the Manager. Except as otherwise expressly set forth in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business and affairs of the Fund and all assets of the Fund, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Fund and the Fund's business.

7.2 **Number, Tenure and Qualifications.** The Fund shall have a single Manager. The Manager shall hold office until it is removed or resigns.

7.3 **Manager Authority.** The Manager shall have all authority, rights and powers to act on behalf of and manage the Fund, subject only to Section 7.4. By way of illustration but not limitation, the Manager's powers shall include the right and authority to do any of the following on behalf of the Fund:

7.3.1 Investigate and perform due diligence on Portfolio Assets, and acquire, hold, monitor, mortgage, pledge, sell, exchange and otherwise dispose of any Portfolio Asset.

7.3.2 Exercise all rights, powers and other incidents of ownership or possession, including any voting or other management participation rights of the Fund, with respect to any Portfolio Asset or other real or personal property owned, leased or otherwise held by the Fund.

7.3.3 Borrow money, or incur indebtedness to acquire Portfolio Assets.

7.3.4 Hold title to any Portfolio Asset in the name of the Fund or any of its nominees for any purpose convenient or beneficial to the Fund.

7.3.5 Enter into such contracts and agreements as the Manager determines to be reasonably necessary or appropriate in connection with the Fund's business and purpose (including contracts with Affiliates of the Manager).

7.3.6 Purchase and maintain any insurance that the Manager deems necessary or appropriate for the protection of the Fund and the Manager, including directors' and officers' liability insurance, general liability insurance and insurance for any other purpose convenient or beneficial to the Fund.

7.3.7 Employ Persons, who may be Affiliates of the Manager, in the operation and management of the business of the Fund, at the cost of the Fund.

7.3.8 Prepare or cause to be prepared reports, statements and other relevant information for distribution to the Special Member and the Members.

7.3.9 Open accounts, make deposits and maintain funds in the name of the Fund in banks, savings and loan associations, "money market" mutual funds and other instruments as the Manager may deem, in its discretion, to be necessary or desirable.

7.3.10 In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of the Special Member or any Member by special or general power of attorney or otherwise:

(a) To add to the representations, duties, services or obligations of the Manager or its Affiliates, for the benefit of the Special Member and the Members;

(b) To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

(c) To delete or add any provision of this Agreement required to be so deleted or added by any federal or state securities law or regulation.

(d) To amend this Agreement to reflect the addition or substitution of the Special Member or the Members or the reduction of the Capital Accounts upon the return of capital to the Special Member or the Members;

(e) To minimize the adverse impact of, or comply with, any regulation of the United States Department of Labor, or other federal agency having jurisdiction, that defines "plan assets" for ERISA purposes; or

(f) To change the name of the Fund or its principal place of business.

7.3.11 Require in any Fund contract that the Manager shall not have any personal liability, but that the Person contracting with the Fund is to look solely to the Fund and its assets for satisfaction.

7.3.12 Maintain for the conduct of the Fund's affairs, one or more offices and in connection therewith, rent or acquire office space, engage personnel, whether part-time or full-time, and do such other acts as the Manager may deem necessary or advisable in connection with the maintenance and administration of such office or offices.

7.3.13 Engage attorneys, accountants, advisors and such other Persons as the Manager may deem necessary or advisable.

7.3.14 Establish reserves in such amounts as the Manager may deem appropriate.

7.3.15 Make or decline to make any elections available to the Fund under the Code.

7.3.16 Redeem or repurchase Interests on behalf of the Fund, in the Manager's sole and absolute discretion except as otherwise required under Section 10.

7.3.17 Initiate, settle and defend legal actions on behalf of the Fund including any such actions with respect to Portfolio Assets.

7.3.18 Pay commissions and other compensation to Persons assisting in the identification of Portfolio Assets or (to the extent permitted by federal and state securities laws and regulations) assisting with the sale of Interests.

7.3.19 Make representations and warranties and indemnifications on behalf of the Fund in connection with the acquisition, funding, ownership or disposition of Portfolio Assets, including in connection with any intercreditor or subscription agreement.

7.3.20 Perform any and all other acts which the Manager is obligated or entitled to perform hereunder.

7.3.21 Take any other action required or permitted to be taken by the Manager pursuant to other provisions of this Agreement.

7.3.22 Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and take all such actions in connection therewith as the Manager may deem necessary or appropriate. Any and all documents or instruments may be executed on behalf and in the name of the Fund by the Manager.

7.4 **Restrictions on the Manager's Authority.**

7.4.1 The Manager shall not have the authority to

(a) Use or permit any other Person to use Fund funds or assets in any manner except for the exclusive benefit of the Fund, or commingle the Fund's funds with those of any other Person.

(b) Alter the primary purpose of the Fund.

(c) Invest Fund funds in any investment other than Portfolio Assets, or make loans to any Person for any purpose other than the acquisition of Portfolio Assets.

(d) Receive from the Fund a rebate, kick-back or give-up or participate in any reciprocal business arrangements which would enable it or any Affiliate to do so (excluding the fees and other items set forth in this Agreement).

7.4.2 Without the consent of the Special Member (which consent may be withheld by the Special Member in its sole discretion), the Manager shall not have authority to:

(a) Admit another Person as the Manager.

(b) Merge the Fund with or into another Person.

(c) Change the jurisdiction of organization of the Fund.

7.5 **Allocation of Portfolio Asset Opportunities.** In the event that the Manager is presented with a potential Portfolio Asset investment which may be made by the Fund and by another investment entity which the Manager or an Affiliate of the Manager advises or manages, the Manager and its Affiliates shall consider such factors as they deem necessary to determine the appropriate entity or entities to make the Portfolio Asset investment, including, without limitation, the investment portfolio of each entity, cash flow of each entity, the effect of the acquisition on the diversification of each entity's portfolio, the established income tax effects of the purchase on each entity, the policies of each entity relating to leverage and the funds of each entity available for investment. The Manager and its Affiliates will present the investment opportunity to the investment entity with investment objectives that most closely correspond to the proposed investment and, otherwise, that has had the funds available for investment for the longest period of time.

7.6 **Tax Matters.**

7.6.1 For tax years beginning in or before 2017, the Special Member shall be the tax matters partner (the "**Tax Matters Partner**") of the Fund and, in such capacity, shall exercise all rights granted to a tax matters partner under the Code and Treasury Regulations thereunder with respect to the Fund, including:

(a) Receiving and responding to any and all notices and requests from any taxing authority;

(b) Informing the Special Member and the Members of any inquiry, examination or proceeding, as required by law, and if not so required, as the Tax Matters Partner shall deem appropriate;

(c) Meeting and negotiating with representatives of any taxing authority;

(d) Entering into a binding settlement agreement with any taxing authority on behalf of the Special Member and all or some of the Members regarding any tax deficiency, assessment, credit or refund; provided, that any such agreement shall be with the approval of the Special Member, and provided further, that any Member may, without prejudicing the validity of any such settlement agreement, elect not to be bound by the settlement agreement where permitted under applicable law;

(e) With the approval of the Special Member, entering into an agreement with any taxing authority to extend the limitations period on the assessment or collection of adjustments;

(f) Commencing administrative or judicial proceedings regarding any tax deficiency, assessment, credit or refund;

(g) Intervening in any judicial action or proceeding, the outcome of which could adversely affect a position taken by the Fund;

(h) Prosecuting an appeal from a decision or judgment of any court which is wholly or partially adverse to a position taken by the Fund; and

(i) Retaining tax advisors to whom the Tax Matters Partner may delegate such of its rights and duties as the Tax Matters Partner shall consider necessary and appropriate, at the cost of the Fund.

7.6.2 For tax years beginning after 2017, the Special Member shall be the "**Partnership Representative**" of the Company for purposes of Section 6223(a) of the Code in respect of Company audits relating to tax returns, and the following provisions shall apply:

(a) In the event the Company shall be the subject of an income tax audit by any federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Partnership Representative shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member thereof; provided, that the Partnership Representative shall not take any action under this Section 7.6.2 that would reasonably be expected to have an unreasonable disproportionate and adverse impact on any Member (assuming that all Members are subject to tax at the effective tax rate applicable to an individual who is a resident of the United States, that each Member has no items of taxable income or loss other than those arising as a result of such Member's interest in the Company and without taking into account any general disproportionate effect resulting from any difference in each Member's relative Interest in the Company) without such Member's consent.

(b) All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Company.

(c) With respect to any tax audit of the Company in respect of taxable years of the Company beginning after 2017, the Partnership Representative shall exercise commercially reasonable efforts to minimize the financial burden of any audit adjustment to the Company and its Members.

(d) In connection with the foregoing, the Partnership Representative shall use commercially reasonable efforts to (i) cause the Company to elect the alternative procedure under Section 6226 of the Code (as in effect for taxable years beginning after 2017), or (ii) otherwise minimize the financial burden of any imputed underpayment (within the meaning of Section 6225(b) of the Code, as in effect for taxable years beginning after 2017) on the Company and its Members and allocate any such imputed payment among the current or former Members of the Company for the "reviewed year" to which the payment relates in a manner that reflects the current or former Members' respective interests in the Company for that year.

(e) In the event that the Partnership Representative causes the Company to make an election pursuant to Section 7.6.2(d)(i), the Members agree to make commercially reasonable efforts to cooperate with the Partnership Representative as necessary to effectuate such election.

(f) The Partnership Representative shall have such other rights and responsibilities in Section 7.6.1, to the extent such rights and responsibilities do not otherwise conflict with the provisions of this Section 7.6.2.

7.7 **Elimination of Liability and Indemnification.**

7.7.1 **Elimination of Liability.** To the fullest extent permitted by law, none of the current or any former Manager, or any partner, member, shareholder, director, officer, manager, employee, agent or Affiliate of the current or former Manager (each, an "**Indemnified Person**"), shall be liable, responsible nor accountable in damages or otherwise to the Fund, to the Special Member or to any Member, or to any successor, assignee or transferee of the Fund, the Special Member or of any Member, for: (a) any acts performed, or the omission to perform any acts, except by reason of acts or omissions of such Indemnified Person which constitute a material breach of this Agreement, bad faith, fraud, gross negligence, intentional misconduct or a knowing violation of criminal or securities laws ("**Non-Covered Conduct**"); (b) the negligence, dishonesty, bad faith, misconduct or any other acts or omissions of any consultants, advisors, attorneys or agents selected or engaged by an Indemnified Person to perform services for the Fund; or (c) the negligence, dishonesty, bad faith, misconduct or any other acts or omissions of any other Person associated with a Portfolio Asset.

7.7.2 **Indemnification.** Except as expressly provided in this Section 7.7.2, the Fund shall, out of the assets of the Fund, to the fullest extent permitted by the laws of the State of Delaware, indemnify and hold harmless each Indemnified Person against losses and damages arising out of liabilities or expenses incurred by such Indemnified Person while acting on behalf

of the Fund. Without limiting the generality of the foregoing, the Fund hereby agrees to indemnify each Indemnified Person, and to save and hold such Indemnified Person harmless, from and in respect of all (a) fees, costs and expenses incurred in connection with or resulting from any demand, claim, action or proceeding against such Indemnified Person or the Fund which arises out of or in any way relates to the Fund or its assets, business or affairs, and (b) all such demands, claims, actions and proceedings and any losses or damages resulting therefrom, including judgments, fines and amounts paid in settlement or compromise of any such demand, claim, action or proceeding; provided, however, that this indemnity shall not extend to (i) conduct of an Indemnified Person determined by a court of competent jurisdiction to be Non-Covered Conduct, (ii) any Indemnified Person whose conduct the Manager has determined at its sole discretion does not merit the benefits of liability elimination as provided in Section 7.7.1, or (iii) any liability arising by reason of any act or omission of a Person subsequent to such Person ceasing to serve in the position making him or it an Indemnified Person or subsequent to the Manager requesting in writing that such Person retire or resign from his or its position making him or it an Indemnified Person. The Fund shall advance the expenses incurred by any Indemnified Person in connection with any proceeding prior to the final disposition of such proceeding, upon receipt of a written undertaking by such Indemnified Person to repay such advance if there shall be an adjudication or determination by a court of competent jurisdiction, for which there is no further right of appeal, that such Indemnified Person is not entitled to indemnification as provided herein. In connection with the indemnification benefits provided hereunder, any Indemnified Person seeking indemnification shall cooperate with and, at the expense of the Fund, use diligent efforts to assist the Fund in seeking from other sources of indemnification available to such Indemnified Person reimbursement for any indemnification payment or expense advancement made by the Fund to or on behalf of such Indemnified Person. For the purposes of this Section 7.7.2, "expenses" includes without limitation attorneys' fees and any expenses of establishing a right to indemnification under this Section 7.7.2.

7.7.3 **Survival.** All rights of the Indemnified Persons to elimination of liability and indemnification under this Section 7.7 shall survive the dissolution of the Fund and the death, withdrawal, removal, incompetency, dissolution, liquidation or insolvency of such Indemnified Person, and shall inure to the benefit of the Indemnified Person's heirs, personal representatives, successors and assigns. No amendment, restatement or termination of this Agreement shall affect the rights of Indemnified Persons under this Section 7.7 with respect to acts, omissions or states of fact occurring or existing prior to such amendment, restatement or termination.

7.7.4 **Enforceability.** In the event that any of the provisions of this Section 7.7 shall be deemed unenforceable to any extent by a court of competent jurisdiction, such unenforceable provision shall be modified or stricken so as to give effect to this Section to provide indemnification to the fullest extent possible.

7.7.5 **Non-Exclusive Remedies.** The provisions of this Section 7.7 shall be in addition to, and not in lieu of, or limit, any provisions of the Fund's Certificate of Formation or the Act mandating or permitting the limitation of liability, and indemnification, of the current or former Manager and certain other Persons.

7.7.6 **Insurance.** The Manager may maintain directors' and officers' liability insurance on behalf of the Fund with such limits, deductions and exclusions as determined by the Manager in its discretion, and the above provisions of this Section 7.7 shall not limit any amounts payable to the Manager or its Affiliates under any such insurance.

7.8 **No Personal Liability for Return of Capital.** The Manager shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contributions of the Special Member or any Member or any loan made by the Special Member or any Member to the Fund, it being expressly understood that any such return of any Capital Contributions or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from the Special Member or any Member) of the Fund.

7.9 **Authority as to Third Persons.**

7.9.1 No Person dealing with the Fund shall be required to investigate the authority of the Manager or secure the approval or confirmation by the Special Member or any Member of any act of the Manager in connection with the Fund's business. No Person shall be required to determine the right to sell or the authority of the Manager to sign and deliver any instrument of transfer or any other instrument on behalf of the Fund, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith.

7.9.2 The Manager shall have full authority to execute on behalf of the Fund any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by one or more officers of the Manager, executing on behalf of the Fund, shall be the only execution necessary to bind the Fund thereto. No signature of the Special Member or any Member shall be required.

7.10 **Principal Transactions and Other Related Party Transactions.** Each Member that is not an Affiliate of the Manager hereby authorizes the Manager, on behalf of such Member, to select one or more persons, who shall not be Affiliates of the Manager, to serve on a committee the purpose of which will be to consider and, on behalf of the Fund and such Members, approve or disapprove, to the extent required by applicable law, principal transactions and other related party transactions.

8. Rights, Authority and Voting of the Special Member and the Members.

8.1 **Members are not Agents.** As provided elsewhere herein, the management of the Fund is vested exclusively in the Manager. Neither the Special Member nor any Member, acting solely in the capacity of the Special Member or a Member, is an agent of the Fund nor can the Special Member or any Member in such capacity bind or execute any instrument on behalf of the Fund.

8.2 **Voting by Special Member and the Members.** Except as otherwise provided in Section 9.2, Section 15, and Section 16.2, only the Special Member shall have the right to vote on any matter under this Agreement.

8.3 **Rights of Special Member and Members.** Neither the Special Member nor any Member shall have the right or power to: (a) withdraw, reduce or demand return of its Capital

Contributions, except as expressly provided in this Agreement or by law; (b) bring an action for partition against the Fund; or (c) demand or receive assets other than cash in return for its Capital Contributions. Except as provided in this Agreement, neither the Special Member nor any Member shall have priority over the Special Member or any other Member either as to the return of Capital Contributions or as to allocations of the Net Income, Net Loss or Distributions of the Fund. Other than pursuant to the withdrawal provisions of Section 10, Section 15, and upon the termination and dissolution of the Fund as provided by this Agreement, there is no time agreed upon when the Capital Contributions of any Member are to be returned.

8.4 **Return of Capital by Members.** As provided in the Act and elsewhere in this Agreement, the Special Member and Members may, under certain circumstances, be required to return to the Fund, for the benefit of the Fund's creditors, amounts previously distributed to the Special Member and Members. If any court of competent jurisdiction holds that the Special Member or any Member is obligated to make any such payment, such obligation shall be the obligation of the Special Member or such Member and not of the Fund, the Manager or any other Member.

9. Resignation and Removal of the Manager.

9.1 **Resignation of Manager.** The Manager may voluntarily resign as the Manager upon no less than 90 days prior written notice to the Special Member and the Members. The Manager shall be deemed to resign if the Manager is dissolved and liquidated or an Event of Insolvency occurs with respect to the Manager.

9.2 **Removal of Manager.** The Special Member has the right to remove the Manager at any time with or without cause. A Member Super-Majority has the right to remove the Manager for cause. "For cause" means gross negligence, fraud or willful misconduct of the Manager or the inability of the Manager to meet its obligations as the same come due.

9.3 **Amounts Owing to Manager.** Upon the resignation or removal of the Manager, the Manager shall be reimbursed by the Fund for any reasonably incurred Operating Costs incurred prior to the date of such resignation or removal.

9.4 **Appointment of Successor or Additional Managers.** If the Manager resigns or is removed, a successor Manager shall be appointed by the Special Member. The Special Member at any time may appoint one or more additional Managers.

10. Transfers and Withdrawals.

10.1 **Transfers of Interests of Members.**

10.1.1 Each Member agrees that it will not make or attempt to make any Transfer of its Interest which will violate this Section 10.1. In the event of any attempted Transfer of any Member's Interest in violation of the provisions of this Section 10.1, without limiting any other rights of the Fund, the Manager shall have the right to require the withdrawal of such Member's Interests from the Fund as provided by Section 10.3.

10.1.2 No Transfer of any Member's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee shall become a Substituted Member, unless the prior written consent of the Manager has been obtained, which consent may be withheld in the Manager's sole discretion or conditioned upon the receipt of any documentation required by the Manager. In the event of any Transfer, all of the conditions of the remainder of this Section 10.1 must also be satisfied.

10.1.3 Without limiting the Manager's discretion, pursuant to the preceding paragraph, the Manager expects to withhold consent to any Transfer of any Member's interest in the Fund, whether voluntary or involuntary, if the Manager has reason to believe that such Transfer may:

(a) require registration of any interest in the Fund under any securities laws of the United States of America, any state thereof or any other jurisdiction;

(b) subject the Fund or the Manager to a requirement to register, or to additional disclosure or other requirements, under any securities or commodities laws of the United States of America, any state thereof or any other jurisdiction;

(c) result in a termination of the Fund for U.S. federal income tax purposes under Section 708(b)(l)(B) of the Code, or cause the Fund to be treated as a "publicly traded partnership" for U.S. federal income tax purposes under Section 7704(b) of the Code;

(d) result in the Fund being considered an investment company within the meaning of the Investment Company Act of 1940, as amended (the "Investment Company Act");

(e) violate or be inconsistent with any representation or warranty made by the transferring Member at the time the Member subscribed to purchase an Interest; or

(f) violate any other applicable law or regulation.

The transferring Member, or his legal representative, shall give the Manager written notice before making any voluntary Transfer and after any involuntary Transfer and shall provide sufficient information to allow legal counsel acting for the Fund to make the determination that the proposed Transfer will not result in any of the consequences referred to in clauses (a) through (f) above. The notice must be supported by proof of legal authority and valid assignment acceptable to the Manager.

(g) In the event any Transfer permitted by this Section shall result in multiple ownership of any Member's Interest, the Manager may require one or more trustees or nominees to be designated to represent a portion of or the entire Interest transferred for the purpose of receiving all notices which may be given and all payments which may be made under this Agreement, and for the purpose of exercising the rights which the transferor as a Member had pursuant to the provisions of this Agreement.

(h) Subsequent to receipt of the consent of the Manager (which consent may be withheld by the Manager in its sole discretion), an authorized transferee shall be

entitled to the allocations and distributions attributable to the Interest transferred to such transferee and to transfer such Interest in accordance with the terms of this Agreement; provided, however, that such transferee shall not be entitled to the other rights of a Member as a result of such transfer until it becomes a Substituted Member. No transferee may become a Substituted Member without the consent of the Manager (which consent may be withheld by the Manager in its sole discretion). A transferring Member will remain liable to the Fund as provided under applicable law and this Agreement regardless of whether its transferee becomes a Substituted Member. Notwithstanding the above, the Fund and the Manager shall incur no liability for allocations and Distributions made in good faith to the transferring Member until a written instrument of transfer has been received by the Fund and recorded on its books and the effective date of the Transfer has passed.

(i) Any other provision of this Agreement to the contrary notwithstanding, a transferee shall be bound by the provisions hereof. Prior to recognizing any Transfer in accordance with this Section 10.1, the Manager may require the transferring Member to execute and acknowledge an instrument of transfer in form and substance satisfactory to the Manager, and may require the transferee to make certain representations and warranties to the Fund, the Manager and Members and to accept, adopt and approve in writing all of the terms and provisions of this Agreement. A transferee shall become a Substituted Member and shall succeed to the portion of the transferor's Capital Account relating to the Interest transferred effective upon the satisfaction of all of the conditions for such Transfer contained in this Section 10.1.

(j) In the event of a Transfer or in the event of a distribution of assets of the Fund to any Member, the Fund may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable U.S. Treasury Regulations, to cause the basis of the Fund's assets to be adjusted for federal income tax purposes as provided by Sections 734 or 743 of the Code.

10.2 **Transfer of Interest of the Special Member.**

The Special Member may not transfer its Interest in the Fund other than (a) to an Affiliate, (b) pursuant to a transaction not deemed to involve an assignment of its investment management obligations within the meaning of the Investment Advisers Act of 1940, as amended, or (c) with the approval of a Member Majority. By executing this Agreement, each Member shall be deemed to have consented to any such transfer made in accordance with this Section 10.2.

10.3 **Withdrawal of Interests of Members.**

10.3.1 The Interest of a Member may not be withdrawn from the Fund prior to its dissolution except as provided in this Section 10.3 and Section 15.

10.3.2 The Manager may, in its sole discretion, permit withdrawals under circumstances and conditions established by the Manager from time to time; provided, however, that prior to any such other withdrawal, the Manager shall consult with counsel to the Fund to ensure that such withdrawal will not cause the Fund to be treated as a "publicly traded partnership" taxable as a corporation. To the extent a Member notifies the Manager of its desire

to withdraw all or a portion of its Capital Account and later chooses not to withdraw such capital, any transaction costs incurred by the Fund or Manager shall be charged to such Member, unless the Manager otherwise determines.

10.3.3 The Manager may suspend the right of any Member to receive a Distribution from the Fund if the Manager reasonably believes it necessary or prudent for the operation of the Fund such as, for example, if the Manager reasonably believes that a withdrawal or Distribution would result in a violation by the Fund or the Manager of any laws, rules or regulations applicable to the Fund or to the Manager, or that disposal of any assets of the Fund or other transactions involving the sale, transfer or delivery of funds, securities or other assets in the ordinary course of the Fund's business is not reasonably practicable without being detrimental to the interests of the withdrawing Members or the remaining Members.

10.3.4 Except as otherwise provided in this Agreement, any withdrawal payments shall be in cash unless the Manager determines otherwise in its sole discretion. In addition, the Manager may deduct from any withdrawal proceeds due to any Member pursuant to this Section 10.3 an amount representing the Fund's actual or estimated expenses associated with processing the withdrawal and an amount representing a withdrawing Member's pro rata share of the estimated costs of a complete liquidation of the Fund. Any such withdrawal charge will be retained by the Fund for the benefit of other Members.

10.3.5 The Manager may, in its sole discretion, upon not less than 90 days prior written notice, require any Member's Interest to be withdrawn in part or in its entirety from the Fund as of any calendar quarter end (or at any other time as may be required by law) and for the Member to cease to be a Member of the Fund (in the case of a withdrawal of a Member's Interest in its entirety) pursuant to this Section 10.3. The amount due to any such Member required to withdraw from the Fund shall be the lesser of such Member's Capital Account or Unreturned Capital Contribution as of the effective date of the withdrawal (net of any applicable charges). Settlements of such involuntary withdrawals will be made in the same manner as voluntary withdrawals.

10.3.6 The right of any Member to withdraw or of any Member to have distributed an amount from its Capital Account pursuant to the provisions of this Section 10.3 is subject to the provision by the Manager for all Fund liabilities and for reserves for contingencies provided for in Section 5.4 herein.

10.3.7 A withdrawing Member shall not share in the income, gains and losses of the Fund or have any other rights as a Member represented by such withdrawn Interests after the effective date of the withdrawal except as provided in Section 10 herein.

10.3.8 The Fund may borrow funds in order to effect a withdrawal of all or a portion of a Member's Interest if the Manager determines such action is in the best interests of the Fund.

11. Records, Accounting and Reports.

11.1 **Records.** The Fund shall maintain at its principal office the Fund's records and accounts of all operations and expenditures of the Fund, including the following:

11.1.1 A current list of the name and last known business or residence address of each Member.

11.1.2 A copy of the Certificate of Formation and all amendments thereto.

11.1.3 Copies of the Fund's federal, state and local income tax or information returns and reports, if any, for the three most recent taxable years.

11.1.4 Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed.

11.1.5 Copies of financial statements of the Fund, if any, for the three most recent years.

11.1.6 Any other documents required by the Act to be maintained at the Fund's principal office.

Subject to Section 11.5.2, each Member has the right, upon written request, to examine at the Fund's principal office during the Fund's normal business hours any of the documents specifically identified above, or to obtain copies of any such documents at the requesting Member's expense.

11.2 **Accounting and Reports.**

11.2.1 The Fund may adopt for tax accounting purposes any accounting method which the Manager shall decide is in the best interests of the Fund and which is permissible for federal income tax purposes.

11.2.2 As soon as practicable after the end of each Fiscal Year, the Manager shall cause the Fund to prepare the financial statements of the Fund for such Fiscal Year on a basis that uses generally accepted accounting principles as a guideline, with such adjustments thereto as the Manager determines appropriate. The Manager will cause the Fund to furnish a copy of such financial statements to each Member. The Manager may engage an accounting firm to assist the Fund with the preparation of such financial statements and may make the determination on whether or not to have such accounting firm audit those financial statements.

11.2.3 On a periodic basis, but not less frequently than annually, but subject to Section 11.5.2, the Manager shall arrange for the preparation and delivery to each Member of an interim report containing such information concerning the affairs of the Fund (which need not be audited or include any financial statements) as the Manage, considers appropriate.

11.2.4 As soon as practicable after the end of each taxable year, the Manager shall furnish to each Member such information as may be required to enable each Member to report for federal and state income tax purposes his distributive share of each partnership item of income, gain, loss, deduction or credit for such year.

11.3 **Valuation of Fund Assets and Interests.**

11.3.1 The Portfolio Assets of the Fund shall be valued at Fair Value.

11.3.2 All other assets of the Fund (except goodwill, which shall not be taken into account) shall be assigned such value as the Manager may reasonably determine.

11.3.3 All values assigned to Portfolio Assets and the Net Assets of the Fund as a whole determined pursuant to this Section 11.3 shall be final and conclusive as to all of the Members.

11.3.4 Liabilities shall be determined using generally accepted accounting principles, as a guideline, applied on a consistent basis; provided, however, that the Manager in its discretion may provide reserves for estimated accrued expenses, liabilities or contingencies, including general reserves for unspecified contingencies (even if such reserves are not in accordance with generally accepted accounting principles). The Fund may amortize its organizational expenses over a 60 month period commencing on the initial closing date of the Fund.

11.4 **Determinations by the Manager.** All matters concerning the determination and allocation among the Members of the amounts to be determined and allocated pursuant to Section 4 hereof, including any taxes thereon and accounting procedures applicable thereto, shall be determined by the Manager unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final and binding on all the Members.

11.5 **Books and Records.**

11.5.1 The Manager shall keep books and records pertaining to the Fund's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains and losses, Members' Capital Accounts and all transactions entered into by the Fund.

11.5.2 The Manager shall establish such standards as it deems appropriate regarding the access of Members to the books and records of the Fund.

11.6 **Financial Statements.** The Fund will prepare annual financial statements containing a year end balance sheet, income statement and a statement of changes in financial position. The Fund will use commercially reasonable efforts to distribute copies of such statements to the Special member and each Member no later than 120 days after the close of each taxable year of the Fund.

11.7 **Tax Information.** The Manager shall cause the Fund, at the Fund's expense, to prepare and timely file federal and state income tax returns for the Fund with the appropriate authorities, and will use commercially reasonable efforts to cause all Fund information necessary in the preparation of the Members' individual income tax returns to be distributed to the Special Member and the Members not later than 90 days after the end of the Fund's tax year.

12. Dissolution of the Fund.

12.1 **Events of Dissolution.** The Fund shall terminate, be dissolved and its assets shall be disposed of, and its affairs wound up upon the earliest to occur of the following (each, a "**Liquidation Event**"):

12.1.1 December 31, 2018.

12.1.2 The liquidation or other disposition of all or substantially all of the Portfolio Assets (other than cash or cash equivalents) without the intention to reinvest the proceeds of such disposition in accordance with this Agreement.

12.1.3 The resignation or removal of the Manager, unless the business of the Fund is continued and a successor Manager is appointed by the Special Member within 90 days following the occurrence of such event.

12.1.4 A determination by the Manager to dissolve the Fund.

12.2 **Certificate of Cancellation.** As soon as possible following the occurrence of any of the events specified in Section 12.1, the Manager (or in the absence of a Manager, one or more Persons selected by the Special Member) shall execute a Certificate of Cancellation in such form as shall be required by the Act.

12.3 **Liquidation of Assets.** Upon a dissolution and termination of the Fund, the Manager (or in case there is no Manager, one or more Persons selected by the Special Member to carry out the liquidation) shall take full account of the Fund assets and liabilities, shall liquidate the Fund's assets to the extent it determines such assets can be liquidated without incurring undue loss or adverse tax consequences, and shall apply and distribute the proceeds therefrom, and any assets to be distributed in kind, in the following order:

12.3.1 To the payment of creditors of the Fund, including Members who are creditors to the extent permitted by law;

12.3.2 To the setting up of any reserves as may be required or permitted by law for any contingent liabilities or obligations of the Fund, in such amounts and to be held and disbursed over such period of time and on such other terms as determined by the Manager (or the Persons carrying out the liquidation) in its sole discretion; and

12.3.3 The balance to the Members (including the Special Member) in accordance with their Capital Accounts as determined after giving effect to all contributions, distributions and allocations for the current and all prior Fiscal Years.

12.4 **Distributions upon Dissolution.** The Special Member and each Member shall look solely to the assets of the Fund for all Distributions and return of Capital Contributions, and shall have no recourse therefor (upon dissolution or otherwise) against any current or former Manager, Special Member, other Member or any other Person.

12.5 **Compliance with Certain Requirements of Regulations; Deficit Capital Accounts.** If the Fund is "liquidated" within the meaning of Treasury Regulations Section l.704-l(b)(2)(ii)(g), Distributions will be made pursuant to this Section 12 to the Members who have positive Capital Accounts in compliance with Treasury Regulations Section l.704-l(b)(2)(ii)(b)(2). If any Member has a deficit balance in his, her or its Capital Account (after giving effect to all contributions, Distributions and allocations for all Fiscal Years), such Member will have no obligation to make any contribution to the capital of the Fund with respect to such deficit, and such deficit will not be considered a debt owed to the Fund or to any other Person for any purpose whatsoever.

13. Special and Limited Power of Attorney.

The Special Member and each Member does irrevocably constitute and appoint the Manager as the Special Member's and the Member's true and lawful attorney-in-fact, with full power of substitution and with authority in the Special Member's and the Member's name, place and stead, to (a) do all things necessary or desirable to admit the Special Member, the Member and any other Members in any offering as the Special Member or Members in the Fund and to effect the transfer of Interests in the Fund and to admit Substituted Members, provided such actions are in accordance with this Agreement; (b) file, prosecute, defend, settle or compromise any and all actions at law or suits in equity for or on behalf of the Fund in connection with any claim, demand or liability asserted or threatened by or against the Fund, so long as such actions are in accordance with this Agreement; and (c) execute, acknowledge, deliver, swear to, file and record: (i) this Agreement and all amendments thereto, (ii) the Certificate of Formation and all amendments thereto, (iii) all certificates and other documents necessary to qualify or continue the Fund in the jurisdictions where it may do business, (iv) all instruments which effect a change or modification of this Agreement in accordance with the terms hereof, (v) all conveyances, instruments or other documents necessary to effect the dissolution, liquidation or termination of the Fund or the admission of Members in accordance with this Agreement, (vi) all other filings with government agencies that are necessary or desirable to carry out the business of the Fund, (vii) all bank, mutual fund and loan and securities brokerage agreements, investment advisory agreements, borrowing agreements and any amendments thereto, and (viii) any agreements, instruments, certificates or other documents within the scope of the Manager's authority under this Agreement (the "**Power of Attorney**"). The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest and shall survive the incapacity, death or dissolution of the Special Member or the Member and the transfer by the Special Member or a Member of any Interests. The Special Member and each Member hereby agrees to be bound by any representation made by the Manager and by any successor thereto, acting in good faith pursuant to the authority granted under this Power of Attorney, and the Special Member and the Member hereby waive any and all defenses which may be available to contest, negate or disaffirm the action of the Manager and any successor thereto, taken in good faith under this Power of Attorney. The Manager may execute the Power of Attorney by executing any agreements, certificates, instruments or other documents with the single signature of the Manager as attorney-in-fact for the Special Member and all Members. The Manager shall promptly give written notice to the Special Member and the Members of any amendments to the Certificate of Formation or this Agreement approved under the power of attorney granted in this Section 13.

14. Confidentiality.

14.1 **Acknowledgement.** The Special Member and the Members hereby acknowledge that the Fund creates and will be in possession of confidential information, the improper use or disclosure of which could have a material adverse effect upon the Fund, the Special Member or one or more Members (each a "**Protected Party**").

14.2 **Restrictions.** Subject to Section 14.3, the Special Member and the Members acknowledge and agree that all information provided to them by or on behalf of the Fund or the Manager concerning the business of the Fund (including, without limitation, this Agreement and all amendments hereto) or any other Protected Party is deemed by the Manager to be strictly confidential and, without the prior written consent of the Manager (which consent may be withheld by the Manager in its sole discretion), shall not be (a) disclosed to any Person (other than the Special Member or another Member) except as expressly permitted by this Section 14.2, or (b) used by the Special Member or a Member other than for a Fund purpose or a purpose reasonably related to protecting the Special Member's or such Member's interest in the Fund. The Manager hereby consents to the disclosure by the Special Member and by each Member of Fund information to the Special Member's and such Member's accountants, auditors, attorneys and similar advisors bound by a duty of confidentiality. In addition, the foregoing requirements of this Section 14.2 shall not apply to the Special Member or a Member with regard to any information that is currently or becomes: (i) required to be disclosed pursuant to applicable law, governmental rule or regulation, court order, administrative or arbitral proceeding (to include a tax audit) or by a governmental or regulatory authority having jurisdiction over the Special Member or such Member (but in each case only to the extent of such requirement), (ii) required to be disclosed in order to protect the Special Member's or such Member's interest in the Fund (but only to the extent of such requirement and only after consultation with the Manager), (iii) publicly known or available in the absence of any improper or unlawful action on the part of the Special Member or such Member, or (iv) known, available to or independently developed by the Special Member or such Member other than through, or derived from, any information provided by the Fund or the Manager or through a third-party in receipt of such information in contravention of the confidentiality provisions hereunder.

14.3 **Exclusion for Receiver.** The restrictions set forth in Section 14.2 will not apply to the Receiver, ACF, AIM or any other Person subject to the powers of the Receiver as set forth in the Final Receivership Order.

15. ACF Redemption.

15.1 **Exit Preference Buyout.** Pursuant to Section 4.3(d) of the Amended and Restated Limited Liability Company Operating Agreement of ETC dated July [ ], 2017 ("**ETC LLC Agreement**"), the Fund has a right, subject to certain conditions, to exercise the Exit Preference Buyout (as such term is defined in the ETC LLC Agreement). The Fund will exercise the Exit Preference Buyout upon, and only upon, the written request of ACF. Unless prohibited by the Act, the Fund will use all of the proceeds received from the Exit Preference Buyout to redeem all of the Interests in the Fund held by ACF ("**ACF Redemption**"). By directing the Fund to exercise the Exit Preference Buyout, ACF irrevocably agrees to the ACF Redemption and the Manager, the Special Member and all of the other Members will be deemed

to have consented to and otherwise approved the ACF Redemption unless the ACF Redemption is prohibited by the Act.

15.2 **Subordination of Payments.** The Manager and the Special Member agree to use commercially reasonable efforts to avoid having the Fund incur a liability that would prevent or otherwise delay the consummation of the ACF Redemption. If requested by ACF, the Manager and the Special Member will agree to subordinate any amounts owed to them by the Fund as necessary to allow for the consummation of the ACF Redemption.

15.3 **Limitation on Amendments.** This Agreement may not be amended in any way that would impair ACF's rights set forth in this Section 15 without the express written consent of ACF. Further, the Fund may not consent to, vote for, or otherwise authorize any amendment to the ETC LLC Agreement that would impair the Fund's ability to exercise the Exit Preference Buyout or that would otherwise impair the Fund's right to receive the proceeds from the Exit Preference Buyout without the express written consent of ACF. ACF may withhold its consent in its sole and absolute discretion. Further, the Fund may not grant any Member or the Special Member with any rights to distributions that are on par with or superior to ACF's right to cause the Fund to exercise the Exit Preference Buyout and consummate the ACF Redemption.

15.4 **Assignability.** ACF may assign its rights under this Section 15 to any Person (other than the Fund) who acquires ACF's Interests in the Fund prior to the ACF Redemption.

16. Amendment of Agreement.

16.1 **Admission of Members.** Amendments to this Agreement for the admission of any Member or Substituted Member shall not, if in accordance with the terms of this Agreement, require the consent of the Special Member or any Member.

16.2 **Amendments.** Subject to Section 15, the terms and provisions of this Agreement may be modified or amended at any time with the consent of a Member Majority, subject to the written consent of the Special Member (which consent may be withheld by the Special Member in its sole discretion). Without the consent of a Member Majority, however, but subject to Section 15, the Special Member may amend this Agreement to (a) reflect changes validly made in the membership of the Fund and the Capital Contributions of the Members; (b) make a change that is necessary or, in the opinion of the Special Member, advisable to qualify the Fund as a limited liability company or a company in which the Members have limited liability in all jurisdictions in which the Fund conducts or plans to conduct business, or to ensure that the Fund shall not be classified as an association taxable as a corporation or treated as a publicly traded partnership taxable as a corporation for federal tax purposes; (c) make any change that does not adversely affect the Members in any material respect that is necessary or desirable: (i) to cure any ambiguity, or to correct or supplement any provision in this Agreement that would otherwise be inconsistent with any other provision in this Agreement, or to otherwise provide for matters or questions arising under this Agreement; (ii) that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or non-U.S. governmental entity; or (iii) that is required or contemplated by this Agreement; (d) make a change in any provision of this Agreement that requires any action to be taken by or on behalf of the Special Member or the Company pursuant

to applicable Delaware law, if the provisions of applicable Delaware law are amended, modified or revoked so that the taking of such action is no longer required; (e) prevent the Company from in any manner being deemed an "investment company" subject to the provisions of the Investment Company Act; or (f) make any other amendments similar to the foregoing. Each Member, however, must approve of any amendment which would (1) amend its Capital Account(s) or rights of withdrawal, or (2) amend the provisions of this Agreement relating to amendments. ACF must approve any amendments to Section 15, Section 17.1, and Section 17.2, and any other amendments to this Agreement that would otherwise impair its rights set forth in Section 15, Section 17.1, and Section 17.2. Notwithstanding any of the foregoing, no Member that relies on Section 3(c)(l) or 3(c)(7) of the Investment Company Act for exception from being obligated to register as an investment company or that is a registered investment company under the Investment Company Act shall be treated as holding more than 9.9 percent of the Interests entitled to consent to such amendment.

16.3 **Execution and Recording of Amendments.** Any amendment to this Agreement permitted by the provisions hereof may be executed by the Manager, as manager, and by the Manager, as attorney-in-fact for each Member, pursuant to the Power of Attorney provided for in Section 13. After the execution of such amendment, the Manager shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment under the Act.

17. Miscellaneous.

17.1 **Venue; Service of Process.** THE PARTIES HEREBY IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF OREGON COURT, and agree and consent that service of process may be made upon it in any legal proceeding relating to this Agreement or any other relationship between the parties by any means allowed under state or federal law. Any legal proceeding arising out of or in any way related to this Agreement or any other relationship between the parties may be brought and litigated in the Oregon Court. The parties waive and agree not to assert, by way of motion, as a defense or otherwise, that any such proceeding is brought in an inconvenient forum or that the venue thereof is improper. Any judicial proceeding involving (directly or indirectly) any matter in any way arising out of, related to, or in connection with this Agreement shall be brought only in the Oregon Court.

17.2 **Governing Law; Jurisdiction.** This Agreement shall be deemed a contract made under the laws of the State of Delaware (without reference to its conflict of laws provisions) and, together with the rights and obligations of the parties hereunder, shall be construed under and governed by the laws of Delaware. Each Member hereby consents to the exercise of personal jurisdiction by the Oregon Court in any action between the parties arising under this Agreement or relating to the subject matter of this Agreement. THE FUND, THE SPECIAL MEMBER AND EACH MEMBER HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT UNDER OR RELATING TO THIS AGREEMENT.

17.3 **Successors and Assigns.** Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, permitted assigns, heirs, executors and administrators of the parties hereto.

17.4 **Notices.** All notices and other communications required or permitted under this Agreement shall be in writing. Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (a) when sent by Federal Express or other overnight courier service of recognized standing, if prepaid for overnight delivery, on the business day following the deposit with such service; (b) when mailed by registered or certified mail, with first class postage prepaid and return receipt requested, 3 days after deposit with the United States Postal Service; and (c) when delivered by hand (including by professional messenger service), upon delivery. Notice shall be addressed (i) if to a Member, at the Member's address as set forth in the Member's Subscription Agreement or in the register maintained by the Fund, and (ii) if to the Fund, at the address of its principal corporate offices (Attn: Legal Department), or at such other address as the Fund or a Member may designate by notice to the other pursuant to the provisions above.

17.5 **Delays or Omissions.** No delay or failure to exercise any right, power or remedy upon any breach or default under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

17.6 **Attorney Fees.** In the event arbitration, suit or action is instituted to enforce or determine the parties' rights or duties in connection with this Agreement, the prevailing party shall recover from the losing party all costs and expenses, including reasonable attorney fees, incurred in such proceedings, including any appellate or bankruptcy proceedings.

17.7 **Severability.** In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, then such provision shall be deemed amended to the extent necessary to conform to applicable law so as to be valid and enforceable or, if such provision cannot be so amended without materially altering the intention of the parties, then such provision shall be stricken and the remainder of this Agreement shall continue in full force and effect without said provision.

17.8 **Expenses.** The Members shall pay all costs and expenses that they incur with respect to the negotiation, execution, delivery and performance of this Agreement.

17.9 **Interpretation.** The words "will" and "shall" have the same meaning in this Agreement. References in this Agreement to "includes" or "including" mean "including without limitation". Whenever required by the context hereof, the singular shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, and vice versa.

17.10 **Captions.** Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

17.11 **Additional Documents.** Each Member, upon the request of the Manager, shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including providing acknowledgment before a notary public of any signature made by a Member.

17.12 **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

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

17.14 **Integrated and Binding Agreement.** This Agreement contains the entire understanding and agreement among Members with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among Members other than those set forth herein, except the Subscription Agreement.

17.15 **Legal Counsel.** Each Member acknowledges and agrees that: (a) Schwabe, Williamson & Wyatt, P.C. has been retained as counsel for the Receiver; (b) no attorney-client relationship exists between Schwabe, Williamson & Wyatt, P.C. and either the Fund or any of its Member; (c) no independent counsel has been retained to represent the Fund or the investors in the Fund; and (d) Schwabe, Williamson & Wyatt, P.C. does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing the Fund or any or all of the Members in any respect with regard to the drafting or negotiation of this Agreement.

17.16 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Facsimile signatures or signatures delivered by electronic means shall be considered original signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the undersigned have set their hands to this Agreement as of the date first set forth in the preamble.

[Signature page follows]

This Agreement was adopted and approved by the Fund, the Manager, the Special Member and by a Member Majority in a consent action dated effective as of the same effective date as this Agreement.

MANAGER:

_____

Aaron D. Maurer, as Manager

SPECIAL MEMBER:

_____

Aaron D. Maurer

EXHIBIT A

CERTAIN DEFINITIONS

In addition to any other defined terms in this Agreement, the following terms used in this Agreement shall have the following meanings:

"Act" means the Delaware Limited Liability Fund Act (6 Del. C. Section 18-101 et seq.), as the same may be amended from time to time.

"Accounting Period" means each period that starts at the opening of business on the commencement date of the Fund (in the case of the initial Accounting Period) and thereafter on the day immediately following the last day of the preceding Accounting Period, and that ends at the close of business on the earliest of the following dates:

(1) the last day of each calendar month;

(2) any date as of which any withdrawal or distribution of capital is made by or to any Special Member or Member or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account of any Special Member or Member, as may be required in order to comply with any legal or regulatory authority.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which Member is obligated to restore and Member's share of Member Minimum Gain and Fund Minimum Gain and;

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-l(b)(2)(ii)(d)(5) and 1.704-1 (b)(2)(ii)(d)(6).

"Affiliate" means with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with that other Person; (ii) any officer, director, manager or partner of that other Person; and (iii) if that other Person is an officer, director, manager or partner, any entity for which that other Person acts in such capacity.

"Agreement" means this First Amended and Restated Limited Liability Company Agreement, as amended from time to time.

"Book Gain" means the excess, if any, of the Fair Value of an asset over its aggregate adjusted basis for federal income tax purposes at the time a valuation of such asset is required under this Agreement or Treasury Regulations Section 1.704-l(b) for purposes of making adjustments to the Capital Accounts.

"Book Loss" means the excess, if any, of the aggregate adjusted basis of an asset for federal income tax purposes over its Fair Value at the time a valuation of the asset is required under this

Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

"Book Value" means the adjusted basis of an asset for federal income tax purposes increased or decreased by Book Gain, Book Loss, Built-In Gain and Built-In Loss as reduced by depreciation, amortization or other cost recovery deductions, or otherwise, based on such Book Value.

"Built-In Gain (or Loss)" means the amount, if any, by which the agreed value of a contributed asset exceeds (or is lesser than) the adjusted basis of such asset contributed to the Fund by a Member immediately after its contribution by such Member to the capital of the Fund.

"Capital Account" with respect to any Member means such Member's initial Capital Contribution adjusted as follows:

(i) A Member's Capital Account shall be increased by:

(a) such Member's share of Net Income;

(b) any income or gain specially allocated to a Member and not included in Net Income or Net Loss;

(c) any additional cash Capital Contributions made by such Member to the Fund; and

(d) the Fair Value of any additional Capital Contributions consisting of an asset contributed by such Member to the capital of the Fund reduced by any liabilities assumed by the Fund in connection with such contribution or to which the asset is subject.

(ii) A Member's Capital Account shall be reduced by:

(a) such Member's share of Net Loss;

(b) any deduction specially allocated to a Member and not included in Net Income or Net Loss;

(c) any cash Distribution made to such Member; and

(d) the Fair Value of any asset (reduced by any liabilities assumed by a Member in connection with the Distribution or to which the distributed asset is subject) distributed to such Member; provided that, upon liquidation and winding up of the Fund, unsold assets will be valued for Distribution at their Fair Value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Fund then sold the assets for their Fair Values.

The Capital Account of a transferee of Interests shall be the Capital Account of its transferor to the extent applicable to the Interests transferred. Notwithstanding anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b).

"Capital Contribution" means a contribution by the Special Member or a Member to the capital of the Fund in cash, property, services or a binding obligation to contribute any of the foregoing.

"Certificate of Formation" means the Certificate of Formation of the Fund as filed with the Secretary of State of Delaware, as the same may be amended or restated from time to time.

"Code" means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

"Distribution" shall refer to any money or other asset transferred without consideration to the Special Member or the Members with respect to their Interests in the Fund.

"Event of Default" means an Event of Insolvency occurs with respect to the Fund.

"Event of Insolvency" shall occur when (a) an order for relief against the Person is entered under Chapter 7 of the federal bankruptcy law, (b) the Person makes a general assignment for the benefit of creditors, (c) the Person files a voluntary petition under the federal bankruptcy law, (d) the Person files a petition or answer seeking for the Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (e) the Person seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or a substantial part of the Person's properties, or (f) the expiration of 90 days after either (i) the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or (ii) the appointment without the Person's consent or acquiescence of a trustee, receiver or liquidator of the Person or of all or any substantial part of the Person's properties, if the appointment has not been vacated or stayed (or if, within 90 days after the expiration of any such stay, the appointment is not vacated).

"Fair Value" means the fair value of a particular asset, determined by the Manager in accordance with GAAP.

"Fiscal Year" means the calendar year.

"Fund Minimum Gain" means "partnership minimum gain" as set forth in Treasury Regulations Section I. 704-2(d).

"GAAP" means generally accepted accounting principles in the United States of America, applied on a consistent basis and applied to both classification of items and amounts, and shall include the official interpretations thereof by the Financial Accounting Standards Board, its predecessors and successors.

"Indemnified Person" has the meaning set forth in Section 7.7.

"Interests" means a Limited Liability Company Membership Interest requiring a Capital Contribution of $1,000 per Interest, subject to Section 3.1.2.

"Limited Liability Company Membership Interest" means a Member's entire interest in the Fund including such Member's interest in Distributions and tax allocations and such other rights and privileges that a Member may enjoy by being a Member under the Act, this Agreement or otherwise.

"Liquidation Period" means the period beginning as of the date the Manager determines the Fund shall be liquidated and continuing until the Fund is liquidated and dissolved.

"Manager" means Aequitas Investment Management, LLC, an Oregon limited liability company, in its capacity as manager of the Fund. The term "Manager" shall also mean any successor or additional manager who is appointed as the Manager of the Fund.

"Member" shall mean any holder of an Interest who is admitted to the Fund as a Member. For purposes solely of Sections 4, 5, and 12.3, the term "Member" shall also include any transferee of one or more Interests not admitted as a Substituted Member.

"Member Majority" means the holders of Interests representing more than 50% of the aggregate Unreturned Capital Contributions related to all unredeemed Interests.

"Member Minimum Gain" means "partner nonrecourse debt minimum gain" as determined under Treasury Regulations Section 1.704-2(i)(3).

"Member Nonrecourse Debt" means "partner nonrecourse debt" as set forth in Treasury Regulations Section l.704-2(b)(4).

"Member Nonrecourse Deductions" means partner recourse deductions, as set forth in Treasury Regulations Section l.704-2(i)(2) and the amount thereof shall be determined as set forth in Treasury Regulations Section I.704-2(i).

"Member Super-Majority" means the holders of Interests representing at least 75% of the aggregate Unreturned Capital Contributions related to all unredeemed Interests.

“Net Assets" means the total value as determined by the Manager of the Fund’s interests in all Portfolio Assets and all other assets of the Fund (including net unrealized appreciation or depreciation of Portfolio Assets and any accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Fund (including any reserves for contingencies accrued pursuant to Section 5.44). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period shall be determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period but after giving effect to any net Capital Contributions and/or withdrawals made by any Member subsequent to the last day of such immediately preceding Accounting Period. Net Assets as of the last day of any Accounting Period shall be determined before giving effect to any of the following amounts payable by the Fund which are effective as of the date on which such determination is made:

(1) any withdrawals or Distributions payable to any Member which are effective as of the date on which such determination is made; and

(2) withholding taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves or other amounts recorded pursuant to Section 5.44 during the Accounting Period ending as of the date on which such determination is made, to the extent the Manager determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably to the Capital Accounts of all Members as of the commencement of the Accounting Period.

"Net Income" or **"Net Loss"** means, respectively, for each taxable year of the Fund the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Fund as determined for federal income tax purposes in accordance with Code Section 703(a) (including all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(l)) with the following modifications:

(i) The amount determined above shall be increased by any income exempt from federal income tax;

(ii) The amount determined above shall be reduced by any expenditures described in Code Section 705(a)(2)(B) or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1 (b)(2)(iv)(i);

(iii) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner;

(iv) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of any Portfolio Asset attributable to unrealized gain or loss in such Portfolio Asset shall be treated as Net Income and Net Loss;

(v) To the extent an adjustment to the adjusted tax basis of any Fund asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations Section l.704-l(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a Distribution other than in complete liquidation of a Member's Interest, the amount of such adjustment will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and will be taken into account for purposes of computing Net Income and Net Loss; and

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.2 will not be taken into account in computing Net Income or Net Loss.

"Nonrecourse Debt" shall have the meaning set forth in Treasury Regulations Section l.704-2(b)(3).

"Nonrecourse Deductions" shall have the meaning, and the amount thereof shall be, as set forth in Treasury Regulations Section l.704-2(c).

"Operating Costs" means (a) accounting, tax preparation and audit fees, (b) legal expenses, (c) expenses relating to the Fund's acquisition, holding and disposition of investments, including research and due diligence expenses, (d) ongoing risk management and investor reporting expenses, (e) regulatory and compliance expenses, (f) entity level taxes, (g) premiums and fees for insurance to benefit, directly or indirectly, the Fund, the Members and indemnified persons and for directors and officers liability insurance or other similar insurance policies, and (h) interest expense and other operating expenses of the Fund, whether paid or incurred by the Fund or paid or incurred by the Manager on behalf of the Fund, all of which shall be payable as incurred or paid but no less often than monthly.

"Organizational Expenses" means the offering costs, legal fees, accounting fees and other costs of organizing the Fund.

"Person" means any natural person or entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

"Portfolio Asset" means any securities, debt instruments, cash or cash equivalent, or any other asset that is held by the Fund.

"Portfolio Value" means the total value of the Portfolio Assets as determined by the Manager in accordance with GAAP, calculated as of the last business day of a month.

"Prime Rate" means an annual interest rate equal to that announced from time-to-time by The Wall Street Journal as the prime rate, and changes in the Prime Rate shall be deemed to occur at the end of each calendar month.

"Regulatory Allocations" means the allocations set forth in Sections 4.2.1 through 4.2.7.

"Securities Act" means the Securities Act of 1933, as amended, and the corresponding provisions of any superseding federal securities law.

"Special Member" means Aequitas Investment Management, LLC, an Oregon limited liability company.

"Subscription Agreement" means the agreement by which each Person desiring to become a Member shall evidence (i) the number of Interests which such Person wishes to acquire, (ii) such Person's agreement to pay the Subscription Payment for such Interests, (iii) such Person's agreement to become a party to and be bound by the provisions of this Agreement, and (iv) certain representations regarding the Person's investment intent and qualifications to be a Member.

"Subscription Payment" means the cash amount required to be paid by a subscribing Person on subscription for Interests as provided in the Subscription Agreement.

"Substituted Member" means any Person admitted as a substituted Member pursuant to this Agreement.

"Tax Payment" shall have the meaning set forth in Section 4.10.1.

"Treasury Regulations" means the regulations of the United States Treasury Department pertaining to the federal income tax laws, as amended from time to time. Any reference in this Agreement to a specific provision of the Treasury Regulations shall refer to the cited provision, as the same may be subsequently amended from time to time, as well as to any successor provisions.

"Unreturned Capital Contributions" means, with respect to a Member, an amount equal to the greater of zero or the Member's cumulative Capital Contributions, minus the sum of:

(a) Distributions in return of such Capital Contributions, if any, under Section 5; and

(b) Distributions of such Member's Capital Account under Section 10.3.

"Withdrawal Date" means the last day of any calendar quarter.

"Withdrawn Interests" means an Interest withdrawn by a Member as permitted under this Agreement.

EXHIBIT B

MEMBERS AND MEMBERSHIP INTERESTS

Member	Address	Capital Contribution	Interests
Aaron D. Maurer – Special Member Interest	[redacted]	$1,000	1
Aequitas Commercial Finance, LLC	5300 Meadows Road, Suite 300 Lake Oswego, OR 97035	$1,536,129	1,536
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$220,000	220
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$100,000	100
[redacted]	[redacted]	$150,000	150
[redacted]	[redacted]	$150,000	150
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$100,000	100
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$130,000	130
[redacted]	[redacted]	$250,000	250

[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$50,000	50
[redacted]	[redacted]	$30,000	30
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$1,000,000	1,000
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$500,000	500
[redacted]	[redacted]	$20,000	20
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
[redacted]	[redacted]	$250,000	250
		$9,237,129	**9,237**

TERMINATION AND RESIGNATION AGREEMENT

This Termination and Resignation Agreement (this "**Agreement**"), dated effective as of July [___], 2017, is by and among Aequitas Investment Management, LLC, an Oregon limited liability company ("**AIM**"), Aequitas ETC Founders Fund, LLC, a Delaware limited liability company (the "**Fund**") and Aaron D. Maurer ("**Maurer**").

RECITALS

A. AIM is the Manager and Special Member of the Fund pursuant to the Limited Liability Company Agreement of the Fund dated September 23, 2011 (the "**Prior LLC Agreement**"). AIM is also the Investment Advisor to the Fund pursuant to the Investment Advisory Agreement dated July 27, 2011 (the "**Investment Advisory Agreement**"). Capitalized terms used in this agreement but not otherwise defined will have the meanings given to them in the LLC Agreement.

B. The Fund's sole investment is in the Series A Preferred Units of ETC Global Group, LLC ("**ETC**").

C. On March 10, 2016, the Securities and Exchange Commission filed an action captioned *SEC v. Aequitas Management, LLC et al.* (Case No. 3:16-cv-00438-PK) alleging defendants violated the federal securities laws. On April 14, 2016, the United States District Court for the District of Oregon (the "**Oregon Court**") entered a Final Order Appointing Receiver (the "**Final Receiver Order**"), appointing Ronald F. Greenspan (the "**Receiver**") as receiver for the entity defendants named in the action and certain of their subsidiaries and affiliates. AIM and the Fund are subject to the powers of the Receiver as set forth in the Final Receiver Order.

D. As of June 30, 2017, the Fund owes AIM accrued and unpaid Management Fees of $1,252,176.15. The Receiver, on behalf of AIM, wishes to resign as Manager of the Fund and is willing to accept a payment of $200,000.00 as a settlement of the accrued and unpaid Management Fees. Maurer has agreed to serve as the new Manager of the Fund at no cost to the Fund other than reimbursement of reasonable out-of-pocket expenses incurred.

E. Concurrent with the execution of this Agreement, the Fund, its Manager, its Special Member and its Members are entering into a First Amended and Restated Limited Liability Company Agreement, which will amend and restate in its entirety the Prior LLC Agreement (the "**LLC Agreement**").

AGREEMENT

The parties agree as follows:

1. Termination of Investment Advisory Agreement; Termination Payment.

(a) The Investment Advisory Agreement is terminated effective as of the date of this Agreement, notwithstanding any provisions in the Investment Advisory Agreement requiring prior notice. Except as set forth in Section 1(b) of this Agreement, no party will have any further obligations under the Investment Advisory Agreement. Notwithstanding the foregoing, Section 10 of the Investment Advisory Agreement will survive the termination of the Investment Advisory Agreement. Further, the parties acknowledge and agree that the reference in Section 10(a) of the Investment Advisory Agreement to Section 7.8 of the Prior LLC Agreement was a "scrivener's error" and should have been, and going forward will be, a reference to Section 7.7 of the LLC Agreement.

(b) In satisfaction of its obligations under Section 11(d) of the Investment Advisory Agreement, the Fund assigns to AIM the Promissory Note dated July [___], 2017 in the principal amount of $200,000.00 made by ETC in favor of the Fund ("**Termination Payment**"). Upon receipt of the Termination Payment, AIM will forgive all remaining accrued and unpaid Management Fees, other fees and expenses that may have been incurred or have accrued under the Investment Advisory Agreement prior to this Agreement.

2. Resignation of Manager.

(a) AIM resigns as Manager of the Fund effective as of the date of this Agreement, notwithstanding any provisions in the LLC Agreement requiring prior notice. AIM will have no further obligations under the LLC Agreement.

(b) The Fund's obligations under Section 9.3 of the LLC Agreement will be satisfied upon payment of the Termination Payment and, upon receipt of the Termination Payment, AIM will forgive all remaining accrued and unpaid Management Fees, other fees and expenses that may have been incurred or have accrued under the LLC Agreement prior to this Agreement. For the avoidance of doubt, the Fund's obligations to AIM under Section 7.7 of the LLC Agreement will survive AIM's resignation as Manager.

3. Appointment of Successor Manager; Transfer of Special Member Interest. AIM appoints Maurer to serve as Manager of the Fund. AIM assigns and transfers its Interest as Special Member of the Fund to Maurer in exchange for Maurer's payment of $1.00. AIM and Maurer will execute and deliver the assignment attached hereto as Exhibit A. Maurer accepts this assignment and agrees to assume the responsibilities of Manager under the LLC Agreement without compensation other than reimbursement of reasonable out-of-pocket expenses incurred as provided in the LLC Agreement.

4. Release. Except for the Excluded Items, the Fund unconditionally and irrevocably discharges, releases, and remises the Receiver and the entities under the control of the Receiver pursuant to the Final Receiver Order and each of their present and former agents, employees, officers, directors, shareholders, partners, affiliates, members, managers, successors, beneficiaries, trustees, assigns, and any related or successor person or entity (the "**Releasees**"), for, of and from any and all past, present or future claims, causes of action, actions, proceedings, suits, charges, debts, dues, sums of money, attorneys' fees and costs, accounts, bills, covenants, contracts, torts, agreements, expenses, wages, compensation, promises, damages, liabilities, judgments, rights, demands, or otherwise ("**Claims**"), of any kind, known or unknown, in law or equity, accrued or unaccrued, contingent or noncontingent, arising at any time, whether or not capable of proof as of the date of this Agreement, whether common law or statutory, whether or not now recognized or known, that the Fund, in any way might have, or could have, against any of the Releasees related to or arising out of the LLC Agreement or the Investment Advisory Agreement. It is the intention of the parties that the language relating to the description of Claims in this Agreement be given the broadest possible interpretation permitted by law. "**Excluded Items**" mean any and all actions, causes of action, liabilities, obligations, judgments and claims, in equity or otherwise, known or unknown that the Fund may have against any SEC Defendant or Andy MacRitchie. "**SEC Defendant**" mean each of Aequitas Management, LLC, Aequitas Holdings, LLC, Aequitas Commercial Finance, LLC, Aequitas Capital Management, Inc., Aequitas Investment Management, LLC, Robert J. Jesenik, Brian A. Oliver and N. Scott Gillis.

5. Further Assurances. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.

6. Law and Venue. THE PARTIES HEREBY IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF OREGON COURT, and agree and consent that service of process may be made upon it in any legal proceeding relating to this Agreement or any other relationship between the parties by any means allowed under state or federal law. Any legal proceeding arising out of or in any way related to this Agreement or any other relationship between the parties may be brought and litigated in the Oregon Court. The parties waive and agree not to assert, by way of motion, as a defense or otherwise, that any such proceeding is brought in an inconvenient forum or that the venue thereof is improper. Any judicial proceeding involving (directly or indirectly) any matter in any way arising out of, related to, or in connection with this Agreement shall be brought only in the Oregon Court.

7. Entire Agreement. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

8. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of this Agreement is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

9. Counterparts. This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Agreement. This Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original. At the request of any party, the other party will confirm facsimile or electronic transmission signatures by signing an original document.

[Signature Page Follows]

The parties have executed this Agreement as of the date first set forth above.

AIM:

Aequitas Investment Management, LLC

By: _____
Name: Ronald F. Greenspan
Title: Receiver

FUND:

Aequitas ETC Founders Fund, LLC
By: Aequitas Investment Management, LLC, its Manager

By: _____
Name: Ronald F. Greenspan
Title: Receiver

MAURER:

_____
Aaron D. Maurer

EXHIBIT A

Assignment and Assumption of Special Member Interest

[Attached Separately Below]

ASSIGNMENT AND ASSUMPTION OF SPECIAL MEMBER INTEREST

1. **Assignment and Assumption**. Subject to the terms and conditions of this Assignment and Assumption of Special Member Interest (this "**Assignment**") and the Termination and Resignation Agreement dated July [___], 2017, Aequitas Investment Management, LLC, an Oregon limited liability ("**Assigning Party**") assigns and transfers to Aaron D. Maurer ("**Assignee**"), and Assignee accepts and assumes, all rights, titles, interests and obligations that Assigning Party has in and with respect to its interest as "Special Member" of Aequitas ETC Founders Fund, LLC, a Delaware limited liability company, under the First Amended and Restated Limited Liability Company Agreement of Aequitas ETC Founders Fund, LLC dated July [___], 2017 (the "**Special Member Interest**"). Assignee accepts this assignment and assumes and agrees to observe and perform all of Assigning Party's obligations and liabilities with respect to the Special Member Interest.

2. **No Warranties**. **Assigning Party makes no warranty of title with respect to the Special Member Interest. Assigning Party expressly excludes all warranties with respect to the Special Member Interest, express and implied, to the fullest extent permitted by law.**

3. **Law and Venue**. THE PARTIES HEREBY IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON (the "**Oregon Court**"), and agree and consent that service of process may be made upon it in any legal proceeding relating to this Assignment or any other relationship between the parties by any means allowed under state or federal law. Any legal proceeding arising out of or in any way related to this Assignment or any other relationship between the parties may be brought and litigated in the Oregon Court. The parties waive and agree not to assert, by way of motion, as a defense or otherwise, that any such proceeding is brought in an inconvenient forum or that the venue thereof is improper. Any judicial proceeding involving (directly or indirectly) any matter in any way arising out of, related to, or in connection with this Assignment shall be brought only in the Oregon Court.

4. **Counterparts**. This Assignment may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Assignment. This Assignment may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original. At the request of any party, the other party will confirm facsimile or electronic transmission signatures by signing an original document.

Dated effective: July [___], 2017

ASSIGNING PARTY:

Aequitas Investment Management, LLC

By: _____
Name: Ronald F. Greenspan
Title: Receiver

ASSIGNEE:

_____
Aaron D. Maurer