Execution

LIMITED LIABILITY COMPANY AGREEMENT

OF

MIDWAY RISING PARTNERS, LLC

Dated as of April 24, 2023

TABLE OF CONTENTS

Page

ARTICLE I DEFINED TERMS 1

1.01 Defined Terms 2

1.02 Other Defined Terms 9

ARTICLE II ORGANIZATION 9

2.01 Continuation 9

2.02 Name and Principal Place of Business 9

2.03 Term 9

2.04 Registered Agent and Registered Office 10

2.05 Purpose and Acquisition Vehicle Structure 10

ARTICLE III MEMBERS 13

3.01 Members 13

3.02 Limitation on Liability 14

ARTICLE IV CAPITAL 14

4.01 Capital Contributions 14

4.02 Capital Accounts 17

4.03 No Further Capital Contributions 18

4.04 Loans 18

ARTICLE V INTERESTS IN THE COMPANY 18

5.01 Return of Capital 18

5.02 Ownership 19

5.03 Waiver of Partition; Nature of Interests in the Company 19

ARTICLE VI ALLOCATIONS AND DISTRIBUTIONS 19

6.01 Allocations 19

6.02 Distributions 19

6.03 Tax Matters 20

6.04 Partnership Representative 21

6.05 Withholding 21

ARTICLE VII MANAGEMENT 22

7.01 Management 22

7.02 Managing Member 28

7.03 Services and Fees 31

7.04 Duties and Conflicts 32

TABLE OF CONTENTS
(continued)

Page

7.05 Company Expenses 32
ARTICLE VIII BOOKS AND RECORDS 33
8.01 Books and Records 33
8.02 Accounting and Fiscal Year 33
8.03 Reports 33
8.04 The Company Accountant 34
8.05 The Budget and Operating Plan 34
8.06 Accounts 35
ARTICLE IX TRANSFER OF INTERESTS 35
9.01 No Transfer 35
9.02 Permitted Transfers 35
9.03 Transferees 35
9.04 Section 754 Election 36
9.05 Right of First Offer 36
ARTICLE X EXCULPATION AND INDEMNIFICATION 38
10.01 Exculpation 38
10.02 Indemnification 38
ARTICLE XI DISSOLUTION AND TERMINATION 40
11.01 Dissolution 40
11.02 Termination 41
11.03 Liquidating Member 42
11.04 Claims of the Members 42
ARTICLE XII MISCELLANEOUS 42
12.01 Representations and Warranties of the Members 42
12.02 Further Assurances 43
12.03 Notices 43
12.04 Governing Law 44
12.05 Attorney Fees 44
12.06 Captions 45
12.07 Pronouns 45
12.08 Successors and Assigns 45

TABLE OF CONTENTS
(continued)

Page

12.09 Extension Not a Waiver 45
12.10 Creditors Not Benefited 45
12.11 Recalculation of Interest 45
12.12 Severability 45
12.13 Entire Agreement 46
12.14 Publicity 46
12.15 Counterparts 46
12.16 Confidentiality 46
12.17 Venue 47
12.18 Waiver of Jury Trial 47
12.19 Arbitration 47
12.20 Representation 48

EXHIBIT A – ALLOCATION OF NET PROFITS AND NET LOSSES

SCHEDULE A – RESOLUTIONS REGARDING APPOINTMENT OF OFFICERS
SCHEDULE 4.01(a) – INITIAL CAPITAL CONTRIBUTIONS

LIMITED LIABILITY COMPANY AGREEMENT
OF
MIDWAY RISING PARTNERS, LLC

This LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of MIDWAY RISING PARTNERS, LLC, is made and entered into as of April 24, 2023 (the "Effective Date"), between ESK MIDWAY RISING INVESTOR, LLC, a Missouri limited liability company ("Investor"), and MIDWAY RISING GP, LLC a Delaware limited liability company ("Sponsor").

WHEREAS, the Company (as hereinafter defined) was formed pursuant to a Certificate of Formation (the "Certificate of Formation"), dated as of March 24, 2023, and filed with the Secretary of State of Delaware on March 24, 2023.

WHEREAS, on December 1, 2022, Zephyr Midway Rising, LLC, a Delaware limited liability company ("Zephyr") and Legends Venue Management, LLC, a Delaware limited liability company ("Legends") formed Midway Rising, LLC, a Delaware limited liability company ("Owner"), as the sole two (2) members of Owner.

WHEREAS, Owner and the City of San Diego (the "City") entered into a certain Exclusive Negotiation Agreement dated as of December 5, 2022 (the "ENA"), setting forth the terms and conditions for Owner's negotiation of the redevelopment development of a sports arena site located on certain real property in the Midway area of San Diego, California further described as the Real Property below (the "Project"). The Project is anticipated to include up to 4,250 multifamily units comprised of 2,000 market-rate units, 2,000 affordable and 250 middle-income units, 250,000 square feet of commercial and retail entertainment space, a 200-key hotel, and a sports arena.

WHEREAS, on December 5, 2022, Owner and Chelsea Investment Corporation ("Chelsea") entered into that certain Memorandum of Understanding Regarding the Design, Development and Financing of the Affordable Housing Component of the Midway Rising Project ("Chelsea MOU") which set forth the terms and conditions upon which Chelsea may develop the affordable housing component of the Project.

WHEREAS, as of the date hereof, Zephyr and Legends contributed all of the interests in Owner to Sponsor.

WHEREAS, on the terms set forth herein, Sponsor shall contribute to the Company one hundred percent (100%) of its membership interests in Owner in exchange for membership interests in the Company.

WHEREAS, concurrently with the execution of this Agreement, Investor and Sponsor shall be admitted as the sole members of the Company.

NOW, THEREFORE, in consideration of mutual promises and agreements herein made and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I
DEFINED TERMS

1.01 Defined Terms. As used in this Agreement, the following terms have the meanings set forth below:

"Acquisition Vehicle" means Owner, and/or any other Person in which the Company shall own a direct or indirect interest to be directly or indirectly wholly owned and Controlled by either the Company or the Members (in the same proportion as their respective interests in the Company), to acquire directly or indirectly or lease all or any portion of the Company Property.

"Acquisition Vehicle Election" has the meaning set forth in Section 2.05(b).

"Act" means the Delaware Limited Liability Company Act, as it may be amended from time to time.

"Additional Capital Contributions" has the meaning set forth in Section 4.01(c).

"Affiliated" or "Affiliate" means, with respect to any Person, (a) any other Person directly or indirectly controlling, controlled by, or under common control with such Person, or (b) any other Person owning or controlling 20% or more of the outstanding voting interests of such Person, or (c) any officer, director, general partner or managing member of such Person, or (d) any other Person which is an officer, director, general partner, managing member or holder of 20% or more of the voting interests of any other Person described in clauses (a) through (c) of this definition. The term "control" as used herein (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power (i) to vote 20% or more of the outstanding voting securities of such person or entity; or (ii) to otherwise direct management policies of such person or entity by contract or otherwise.

"Affordable Housing Developer" means (i) Chelsea, or (ii) another party selected by the Executive Committee to complete the affordable housing component of the Project.

"Agreement" has the meaning set forth in the introductory paragraph hereof.

"Appraisal Date" shall have the meaning set forth in Section 2.05(d)(ii).

"Appraisals" shall have the meaning set forth in Section 2.05(d)(ii).

"Appraiser Qualifications" shall have the meaning set forth in Section 2.05(d)(ii).

"Appraisers" shall have the meaning set forth in Section 2.05(d)(ii).

"Assumed Tax Rate" means with respect to a fiscal year of the Company, the sum of: (a) the highest federal individual income tax rate; and (b) the highest applicable state individual income tax rate in effect for that fiscal year; provided, however, that (i) the deductibility of state income taxes for federal income tax purposes, if applicable, and (ii) the character of any income or gain and the applicable income tax rates, shall be taken into account.

"Basic Terms" shall have the meaning set forth in Section 9.05(c).

"Budget" means the budget covering the Company's and each Acquisition Vehicles' anticipated operations approved by the Executive Committee and in effect from time to time pursuant to Section 8.05.

"Business Day" means any day other than Saturday, Sunday, any day that is a legal holiday in the State of California, or any other day on which banking institutions in California are authorized to close.

"Capital Account" means the separate account maintained for each Member under Section 4.03.

"Capital Contribution" means, with respect to any Member, all Initial Capital Contributions and Additional Capital Contributions made (or deemed made) by such Member to the Company pursuant to this Agreement.

"Capped Interest Price" has the meaning set forth in Section 2.05(e)(iv).

"Certificate of Formation" has the meaning set forth in the recital paragraphs to this Agreement.

"Change in Control" shall mean either: (a) the Managing Member is no longer controlled by Legends or Zephyr, or their respective Affiliates, or any replacement person or entity designated by the Investor as a replacement for the Managing Member pursuant to Section 7.02(a); or (b) a merger, consolidation, or conversion of the Managing Member with or into another business entity that is the surviving entity in such merger, consolidation, or conversion other than a merger, consolidation, or conversion with an Affiliate of the Managing Member including Legends and Zephyr and Affiliates thereof.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means the limited liability company continued and governed by the terms of this Agreement.

"Company Accountant" has the meaning set forth in Section 8.04.

"Company Property" means, either individually or collectively as the context requires or otherwise indicates, (i) any asset or other property (real, personal or mixed) owned by or leased to the Company, directly, or indirectly through one or more Acquisition Vehicles, which shall consist of the Initial Company Property and (ii) any and all other property directly or indirectly acquired by the Company or by one or more Acquisition Vehicles from time to time.

"Confidential Information" has the meaning set forth in Section 12.16(a).

"Contributing Member" has the meaning set forth in Section 4.01(d).

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"Conversion Notice" has the meaning set forth in Section 2.05(e).

"Crystallization Cap" has the meaning set forth in Section 2.05(e)(iv).

"Delaware Act" means the Delaware Limited Liability Company Act, as amended from time to time.

"Dilution Option" has the meaning set forth in Section 4.01(d).

"Draw Request" has the meaning set forth in Section 7.02(f).

"Executive Committee" has the meaning set forth in Section 7.01(e).

"Expenses" means, for any period, without duplication, the total gross expenditures of the Company reasonably relating to the operations of the Company and all Acquisition Vehicles, and/or ownership, maintenance, management, operations, sale, financing or refinancing of the Company Property during such period provided for in the then applicable Budget or otherwise approved (either prospectively or retroactively) by the Executive Committee, including (a) all cash operating expenses (including without limitation, real estate taxes and assessments, personal property taxes, tenant improvement allowances, payments and concessions, sales taxes, and all fees, commissions, expenses and allowances paid or reimbursed to any Member or any of its Affiliates pursuant to any asset management agreement, including any Predevelopment Management Fees, property or development management agreement or otherwise as permitted hereunder), (b) all deposits of Revenues to the Company's or Acquisition Vehicles' reserve accounts, (c) all debt service payments including debt service on loans made to the Company by the Members or any of their Affiliates, and (d) all expenditures related to any acquisition, sale, disposition, financing, refinancing or securitization of any Company Property.

"Fair Market Value" shall have the meaning set forth in Section 2.05(d)(i).

"Family Member" means any Person's spouse, parent, sibling, descendant (including adoptive relationships and stepchildren), and the spouse of each such persons.

"For Cause" shall mean (A) an event in which the Managing Member (or one or more of its For Cause Affiliates) (i) commits fraud, theft, or intentionally misappropriates any funds derived from the Company or any Acquisition Vehicle, (ii) commits gross negligence or a material breach of this Agreement (except for any failure to fund any Capital Contributions as set forth in Section 4.01(c) below), in each case in connection with any of its obligation hereunder, provided, however, that such material breach shall not be deemed to have given rise to For Cause until the later of (a) the elapse of thirty (30) days after receipt of written notice of such breach without any cure of such breach by Managing Member (or the For Cause Affiliate, if applicable) and (b) to the extent such breach would reasonably require longer than thirty (30) days to cure, the elapse of a reasonable period of time to cure such breach so long as Managing Member (or the For Cause Affiliate, if applicable) commences cure of such breach within thirty (30) days after receipt of written notice of such breach and diligently pursues cure thereof; (iii) willfully fails to implement the Operating Plan (provided that Managing Member is in no way guaranteeing any financial results of the Company or any Acquisition Vehicle), or (iv) commits an act that pursuant to Section 10.02(b)(iii) requires the Managing Member to indemnify the Company or any of the Members,

in each case as determined in a final, arbitral award pursuant to Section 12.19, (B) the filing of any voluntary petition in bankruptcy of the Company by Sponsor or the consenting to the filing of any involuntary petition in bankruptcy against the Company which is consented to by Sponsor without the consent Investor, (C) a Change in Control of the Managing Member, or (D) the Managing Member's Percentage Interest is less than eight percent (8%) during the Predevelopment Period or less than four percent (4%) during the Post-Construction Commencement Period, in each case due to any exercise of Investor of any Dilution Option to the extent that Managing Member has failed to make any Additional Capital Contribution set forth in a Budget approved by Managing Member and Investor.

"For Cause Affiliate" means, with respect to any Person, an Affiliate of such Person. Neither Member shall be deemed to be For Cause Affiliates of the other Member.

"GAAP" means United States generally accepted accounting principles consistently applied.

"Guaranties" has the meaning set forth in Section 4.05.

"Guarantor" has the meaning set forth in Section 4.05.

"Guaranty Fee" has the meaning set forth in Section 4.05.

"Indemnifiable Guaranty Expenses" means any losses, claims, demands, liabilities, costs, damages, expenses (including reasonable fees and expenses of outside counsel) or amounts paid in settlement of claims, actions or suits arising in respect of any Guaranties.

"Indemnitees" has the meaning set forth in Section 10.02(a).

"Initial Budget and Operating Plan" has the meaning set forth in Section 8.05.

"Initial Capital Contribution" means, with respect to any Member, any capital contribution made by such Member pursuant to Section 4.01(a) and Section 4.01(b) hereof.

"Initial Company Property" means one hundred percent (100%) of the membership interest in Owner, which shall own the Real Property.

"Initial Sale Notice" shall have the meaning set forth in Section 9.05(b).

"Interest" means, with respect to any Member at any time, the interest of such Member in the Company at such time, including the right of such Member to any and all of the benefits to which such Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

"Interest Price" shall have the meaning set forth in Section 2.05(e)(iii).

"Interest Price Promote Payment" shall have the meaning set forth in Section 2.05(e).

"Investor" has the meaning set forth in the introductory paragraph hereof.

"Investor Counsel" has the meaning set forth in Section 12.20.

"Investor Reimbursement Amount" has the meaning set forth in Section 7.03(b).

"Lender" has the meaning set forth in Section 4.05.

"Liquidating Member" means the Managing Member; provided, however, that if Managing Member is then in default hereunder, Investor or its designee may, in the Investor's sole discretion, serve as the Liquidating Member.

"Loan" has the meaning set forth in Section 4.05.

"Lockout Date" means the date that the Predevelopment Period expires.

"Major Decision" means the decisions requiring the approval of the Executive Committee or the Members pursuant to Sections 7.01(a) or 7.01(d).

"Managing Member" means the Member then serving as Managing Member pursuant to this Agreement which shall initially be Sponsor in accordance with Section 7.02.

"Mandatory Capital" has the meaning set forth in Section 4.01(c).

"Member" means one or more of Investor and/or Sponsor or any other Person who is admitted as a member of the Company in accordance with this Agreement and applicable law.

"Member Loan" has the meaning set forth in Section 4.01(d).

"Necessary Expenses" means expenses in respect to debt service or other required payments in connection with any Loan and any nonrecourse, completion or payment guaranties executed in connection with any Loan (including any amounts necessary to avoid or cure a default thereunder, or repaying the Loan at maturity or during the existence of an event of default under the loan documents, together with all exit fees, yield or spread maintenance payments, accrued fees, costs and expenses in connection therewith), utilities, real estate taxes and assessments, insurance and emergency repairs or other expenditures which the Executive Committee determines are necessary for the continued ordinary operation of the Company Property, including without limitation uninsured losses or deductibles, operating shortfalls, repairs, additions or modifications to comply with applicable laws or insurance requirements, insurance premiums for insurance policies approved by Executive Committee, and any final orders, judgments, or other proceedings and all costs and expenses related thereto, regardless of whether the Budget has been approved or whether such expenditures exceed the amounts provided for in the applicable Budget.

"Net Cash Flow" means, for any period, the excess of (a) Revenues for such period over (b) Expenses for such period.

"Net Profits" and "Net Losses" has the meaning given to such term on Exhibit A.

"Non-Contributing Member" has the meaning set forth in Section 4.01(d).

"Notices" has the meaning set forth in Section 12.03.

"Operating Plan" means the strategic and comprehensive operating plan covering the Company's and Acquisition Vehicles' anticipated development, construction, and operation of Company Property and approved by the Executive Committee and in effect from time to time pursuant to Section 8.05.

"Orrick" has the meaning set forth in Section 12.20.

"Owner" means Midway Rising, LLC, a Delaware limited liability company.

"Pad Owner JV" has the meaning set forth in Section 2.05(c).

"Pads" has the meaning set forth in Section 2.05(a)(ii).

"Percentage Interest" means (a) during the Predevelopment Period, (i) ten percent (10%) with respect to Sponsor, and (ii) ninety percent (90%) with regard to Investor, and (b) from and after the commencement of the Post-Construction Commencement Period, (i) five percent (5%) with respect to Sponsor, and (ii) ninety-five percent (95%) with regard to Investor, as such may be adjusted in accordance with Sections 2.05(d), 2.05(e) and 4.01(e)(ii).

"Percentage Interest True-Up Payment" has the meaning set forth in Section 4.01(h).

"Permitted Transferee" means, with respect to a Member, (a) any other Person directly or indirectly controlling, controlled by, or under common control with such Person, or (b) any other Person owning or controlling 20% or more of the outstanding voting interests of such Person. In addition to the foregoing, "Permitted Transferee" means, with respect to Investor, (a) E. Stanley Kroenke ("ESK"), or (b) any Family Member of ESK. The term "control" as used in this definition (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power (i) to vote 20% or more of the outstanding voting securities of such person or entity; or (ii) to otherwise direct management policies of such person or entity by contract or otherwise.

"Person" means any individual, partnership, corporation, limited liability company, limited liability partnership, trust or other entity.

"Post-Construction Commencement Period" means the period commencing upon the receipt of final, non-appealable entitlements allowing for horizontal development of any portion of the Project or the commencement of construction of master infrastructure, site grading or vertical development of any portion of the Project.

"Predevelopment Management Fees" has the meaning set forth in Section 7.03(a).

"Predevelopment Period" means the period between the Effective Date and the commencement of the Post-Construction Commencement Period.

"Preferred Rate of Return" means the annual percentage rate calculated, determined on a cumulative, annually compounding basis, and calculated from the date a Capital Contribution is made.

[redacted]

"Project" shall mean the Project as set forth in the Recitals above, including the acquisition and operation of the Real Property and improvements located thereon, and thereafter, the design, entitlement, construction, renovation, repositioning, marketing, management, leasing, operation, and/or sale of the Real Property and improvements located thereon, including the preparation of Pads for any component of the Project.

"Promote Payment" has the meaning set forth in Section 6.02(a)(iii).

"Purchase Notice" shall have the meaning set forth in Section 9.05(c).

"Real Property" means certain land (and improvements thereon) comprising 48.5 acres of land located at 3500, 3250, 3220 and 3240 Sports Arena Blvd, San Diego, California 92110 (APNs: 760-102-05, 760-245-09, 760-245-10, 760-102-32, 760-102-27, 760-217-43, 760-102-01, 760-102-04).

"Revenues" means, for any period without double counting, the total gross revenues received by the Company and Acquisition Vehicles during such period, including all receipts of the Company and Acquisition Vehicles from (a) rent, cost, expense and other recoveries and all additional rent paid to the Company and Acquisition Vehicles (including for parking facilities), including any and all income received from operations, (b) concessions to the Company and Acquisition Vehicles which are in the nature of revenues, (c) rent or business interruption insurance, and casualty and liability insurance, if any, (d) funds made available to the extent such funds are withdrawn from the Company's or an Acquisition Vehicles' reserve accounts and deposited into the Company's or Acquisition Vehicles' operating accounts, (e) proceeds from the sale or other disposition of any Company Property, (f) proceeds from the financing, refinancing or securitization of any Company Property, and (g) other revenues and receipts realized by the Company or Acquisition Vehicles.

"ROFO Offer Price" shall have the meaning set forth in Section 9.05(c).

"Section 6226 Election" has the meaning set forth in Section 6.04.

"Sponsor" has the meaning set forth in the introductory paragraph hereto.

"Sponsor Promote Crystallization Option" has the meaning set forth in Section 2.05(d).

"Stabilization" means, with respect to any component of the Project which becomes owned by a Pad Owner JV in accordance with Section 2.05(c), the date upon which a certificate of occupancy has been issued for such Pad.

"Substitute Contribution" has the meaning set forth in Section 4.01(d).

"Substitute Contribution Election" has the meaning set forth in Section 4.01(d).

"Third Appraiser" has the meaning set forth in Section 2.05(d)(ii).

"Transfer" has the meaning set forth in Section 9.01.

"Treasury Regulation" or "Regulation" means, with respect to any referenced provision, such provision of the regulations of the United States Department of the Treasury or any successor provision.

"Valuation Notice" has the meaning set forth in Section 2.05(d).

1.02 Other Defined Terms. As used in this Agreement, unless otherwise specified, (a) all references to Sections, Articles or Exhibits are to Sections, Articles or Exhibits of this Agreement, and (b) each accounting term has the meaning assigned to it in accordance with GAAP.

ARTICLE II
ORGANIZATION

2.01 Continuation. The Company was formed as a limited liability company under the Delaware Act by the filing of the Certificate of Formation. The Members hereby agree to continue the Company as a limited liability company under the Delaware Act, upon the terms and subject to the conditions set forth in this Agreement. The Managing Member may, with the prior written approval of the Executive Committee, file and record any amendments to the Certificate of Formation and such other documents as may be reasonably required or appropriate under the Delaware Act or the laws of any other jurisdiction in which the Company may conduct business or own property.

2.02 Name and Principal Place of Business.

(a) The name of the Company is set forth on the cover page to this Agreement. The Executive Committee may change the name of the Company or adopt such trade or fictitious names for use by the Company as the Executive Committee may from time to time determine. All business of the Company shall be conducted under such name, and title to all Company Property shall be held in such name.

(b) The principal place of business and office of the Company shall be located at the offices of the Managing Member at 700 Second Street, Encinitas, California 92024, or at such other place or places as the Executive Committee may from time to time reasonably designate.

2.03 Term. The term of the Company commenced on April 24, 2023, the date of the filing of the Certificate of Formation pursuant to the Delaware Act, and shall continue until terminated pursuant to the provisions of this Agreement.

2.04 Registered Agent and Registered Office. The name of the Company's registered agent for service of process shall be The Corporation Trust Company, and the address, of the Company's registered agent and the address of the Company's registered office in the State of Delaware shall be 1209 Orange Street, Wilmington, Delaware 19801. Such agent and such office may be changed from time to time by the Executive Committee with written notice to all Members.

2.05 Purpose and Acquisition Vehicle Structure.

(a) The purpose of the Company shall be:

(i) To acquire the Initial Company Property;

(ii) To acquire, own, entitle, manage, operate, develop, hold, service, lease, improve, finance, refinance, market, sell and otherwise deal with and dispose of the Company Property in furtherance of the Project or any component thereof, including potential vertical development of the arena, retail and entertainment area, hotel, and moderate and market-rate multifamily residential units, the construction of master on-site and off-site infrastructure, the preparation and delivery of graded pads for any component of the Project ("Pads") for sale to third parties subject to the terms of Section 9.05 below, construction of parking garages of the arena, retail and entertainment areas, negotiation of the affordable housing component of the Project with the Affordable Housing Developer; and

(iii) To conduct all activities reasonably necessary or desirable to accomplish the foregoing purposes.

(b) Notwithstanding anything to the contrary contained in this Agreement, upon the election of the Executive Committee (an "Acquisition Vehicle Election"), the Members shall cause the formation of an entity or entities directly or indirectly wholly owned and Controlled by either the Company or the Members (in the same proportion as their respective interests in the Company, including, without limitation, Owner) to acquire or lease all or any portion of the Company Property. It is expressly understood that the Company may own all or any portion of the Company Property, and conduct all or any portion of its business directly or indirectly through one or more Acquisition Vehicles; provided that it is the intent of the Members that the organizational documents relating to the formation of any Acquisition Vehicle shall be interpreted together with and be consistent with the provisions of this Agreement. The Managing Member shall perform, with no additional compensation, the same or substantially identical services for each Acquisition Vehicle as the Managing Member performs for the Company, subject to the terms, conditions, limitations and restrictions set forth in this Agreement. The Managing Member agrees to perform such duties, and in such circumstances and with regard to such duties, the Managing Member shall be subject to the same standards of conduct and shall have the same rights and obligations with regard to such duties performed or to be performed on behalf of any Acquisition Vehicle as are set forth in this Agreement with regard to the same or substantially identical services to be performed for or on behalf of the Company.

(c) Notwithstanding anything to the contrary contained in this Agreement, on or prior to the commencement of vertical construction of any Pad by or on behalf of the Company, the Company shall cause such Pad to be contributed to a separate entity directly or indirectly owned

by the Members in the same proportion as their respective interests in the Company, pursuant to a joint venture agreement on terms substantially similar to this Agreement (a "Pad Owner JV") for its Fair Market Value (as determined in accordance with subsection (d) below); provided, however, that the calculations of the Preferred Return, Promote Payment and other distribution calculations within the Pad Owner JV shall be calculated an individual basis (i.e., not combined with this Agreement or any other Pad Owner JV), and provided further, such Pad Owner JV shall include a Sponsor Promote Crystallization Option as set forth in Section 2.05(d) below. All references to Pad Owner JV section references and defined terms in quotations in Sections 2.05(d), (e) and (f) below shall refer to defined terms and section references with substantially similar meanings and provisions as set forth in this Agreement. The Members shall cooperate with the Company as reasonably necessary to structure the contribution of any Pad to a Pad Owner JV in a manner that is tax-efficient for the Company and the Members.

(d) "Sponsor Promote Crystallization Option" shall mean that Sponsor shall have the right, in its sole discretion, beginning upon Stabilization of a Pad, and continuing at any time within three (3) years after Stabilization of such Pad, to deliver a notice (a "Valuation Notice") to Investor that it is initiating a "Sponsor Promote Crystallization Option" as set forth below:

(i) If Sponsor delivers a Valuation Notice (or if the Members are unable to agree on the Fair Market Value of a Pad being contributed to a Pad Owner JV), such Valuation Notice shall include Sponsor's calculation of the proposed Fair Market Value of the applicable "Company Property" for Investor's approval or disapproval. "Fair Market Value" means the price as determined in accordance with Section 2.05(d)(ii) at which the applicable "Company Property", would be sold for cash by a willing seller, not compelled to sell, to a willing buyer, not compelled to buy, on a free and clear basis, unencumbered by any financing (including any deeds of trust, mortgages, ground leases or other security instruments securing any financing).

(ii) If the Members are unable to agree on the Fair Market Value within twenty (20) Business Days following Investor's receipt of Sponsor's initial calculation, each of the "Members" shall promptly select and direct an independent MAI appraiser (collectively, the "Appraisers") who is licensed in California and familiar with, and who regularly practices in, the commercial real estate market in San Diego, California, and who has not received more than five percent (5%) of its fees during the preceding twenty-four (24) calendar months from any "Member" or any "Affiliate" thereof (the "Appraiser Qualifications"), to give its written opinion and written appraisal as to the then fair market value of the "Company Property" (each Appraiser's "Appraised Value"). The Appraisers shall each make their determination and shall each render a written appraisal (collectively, the "Appraisals") to the Members within thirty (30) days of its direction or engagement (the "Appraisal Date"). If the Appraisers agree on the Appraised Value, such Appraised Value shall be the Fair Market Value of the "Company Property". If the Appraised Values are within three and one-half percent (3.5%) of each other, the average of the two Appraised Values shall be the Fair Market Value for the "Company Property". If the Appraised Values are not within three and one-half percent (3.5%) of each other, the Appraisers shall, within ten (10) days of the Appraisal Date, select a third independent appraiser who meets the Appraiser Qualifications (the "Third Appraiser"). The Third Appraiser shall be limited to selecting one of the two Appraiser's Appraised Values, and the Third Appraiser shall not be entitled to average the values determined in the two Appraisals or to select some other value between, greater than or lower than the values determined in the two Appraisals (i.e., the process

will be baseball arbitration). The Third Appraiser shall render its selection of one or the other Appraised Value in writing within thirty (30) days of its direction or engagement by the Appraisers, and such selection shall be the Fair Market Value for the "Company Property". Each party shall be responsible for all fees and costs incurred in obtaining the appraisal from its Appraiser and the parties shall share equally all fees and costs incurred in obtaining the appraisal from the Third Appraiser.

(e) Upon determination of the Fair Market Value through the above procedure set forth in Section 2.05(d)(i) and (ii), Sponsor shall have ten (10) Business Days to elect to either (i) receive a payout of the "Promote Payment" as set forth in Section 6.02(a)(iii) of the Pad Owner JV based upon a distribution of the Net Cash Flow in the amount of the Interest Price (an "Interest Price Promote Payment") which calculation Sponsor shall deliver in writing to Investor, or (ii) to have Sponsor's Percentage Interest adjusted (a "Conversion Notice"), as set forth below; provided, however, that if Sponsor fails to timely deliver any such written notice, Sponsor shall be deemed to have delivered written notice electing to receive a payout of the Interest Price Promote Payment. Within twenty (20) Business Days after the receipt of Sponsor's written notice or deemed written notice of election to receive a payout of the Interest Price Promote Payment, Investor shall pay to Sponsor the amount of the Interest Price Promote Payment. During such twenty (20)-Business Day period, Investor may deliver written notice disputing such calculation of the Interest Price Promote Payment accompanied by Investor's calculation of the Interest Price Promote Payment, and if the parties are unable to agree within another fifteen (15) Business Days on the amount of the Interest Price Promote Payment, calculation of the Interest Price Promote Payment shall be determined by the Company Accountant, which determination shall be binding on the parties. Failure by Investor to timely deliver the foregoing notice shall be deemed Investor's acceptance of the calculation of the amount of the Interest Price Promote Payment. If Investor fails to pay such Interest Price Promote Payment after the later of the expiration of such twenty (20)-Business Day period and the date of the determination of the calculation of Interest Price Promote Payment by the Company Accountant, to the extent Investor has timely disputed such calculation, (i) Investor's appointees to the Executive Committee shall have no voting rights on any Major Decisions while such Interest Price Promote Payment is outstanding; and (ii) such amount shall be treated as a Member Loan from Sponsor to Investor, which shall accrue at the rate of fifteen percent (15%) per annum and otherwise be treated as a Member Loan under this Agreement; provided that, upon Investor making such payment (together with the applicable accrued interest), the right of Investor's appointees to the Executive Committee to vote on Major Decisions shall be revived in full. If Sponsor delivers a Conversion Notice, Sponsor's Percentage Interest shall be adjusted as follows:

(i) In lieu of receipt of the payment of the "Promote Payment" to Sponsor, the "Percentage Interest" of Sponsor shall be adjusted to a percentage equal to the quotient of (a) the Interest Price (as defined below) divided by (b) the net amount that would have been distributed to the "Members" upon a liquidation of the Pad Owner JV if the "Company Property" had been sold on the date of closing at Fair Market Value, and following the consummation of such sale, and after payment of all of the Pad Owner JV's liabilities and obligations (but disregarding any prepayment premium that would be due on the prepayment of any "Loan", but only if the "Lender" is not entitled to recover or waives the right to recover payment of such prepayment premium upon the sale of the "Company Property", the proceeds of such sale had been distributed to the "Members" in accordance with the provisions of the Pad Owner JV, and (ii) all "Member Loans", together with all accrued interest thereon, were repaid.

(ii) From and after the closing of the conversion (which shall be deemed to have occurred upon delivery of the Conversion Notice), all "Net Cash Flow" to the "Members" that would otherwise be allocated pursuant to Section 6.02(a) shall instead be allocated to the "Members" in accordance with their respective "Percentage Interests" as adjusted pursuant to this Section 2.05(d) and Sponsor shall no longer be entitled to any "Promote Payment".

(iii) "Interest Price" shall mean the net amount that would have been distributed to Sponsor upon a liquidation of the Pad Owner JV if (a) the "Company Property" had been sold on the date of closing at the Fair Market Value, and following the consummation of such sale, and after payment of all of the Pad Owner JV's liabilities and obligations (but disregarding any prepayment premium that would be due on the prepayment of any "Loan", but only if the "Lender" is not entitled to recover or waives the right to recover payment of such prepayment premium upon the sale of the "Company Property", the proceeds of such sale (after taking into account the payments described in clause (b) below) had been distributed to Sponsor in accordance with the provisions of the Pad Owner JV (which for the avoidance of doubt shall include the Promote Payment), and (b) all "Member Loans", together with all accrued interest thereon, were repaid.

(iv) Notwithstanding the foregoing in this Section 2.05(e), Sponsor's "Percentage Interest" shall not be adjusted to exceed twenty percent (20%) (the "Crystallization Cap"), and to the extent the conversion process set forth in Section 2.05(e) would result in an adjusted "Percentage Interest" that exceeds the Crystallization Cap, Sponsor's "Percentage Interest" shall be adjusted to be twenty percent (20%) and Sponsor shall receive an "Interest Price Promote Payment" as set forth in Section 2.05(e) in the amount of the difference between (A) of the "Interest Price Promote Payment" amount that would be payable based on the "Interest Price" and (B) the "Interest Price Promote Payment" amount that would be payable based on the Capped Interest Price as hereinafter defined. "Capped Interest Price" means the amount which, if established as the "Interest Price" pursuant to Section 2.05(e)(iii) above, would result in an adjustment of Sponsor's "Percentage Interest" to twenty percent (20%) pursuant to the terms of this Section.

(f) The Members intend that (i) the conversion of Manager's Percentage Interest pursuant to Section 2.05(e) shall not be treated, for federal income tax purposes, as an event that would cause the recognition of taxable gain, (ii) at or about the time of such conversion, the Capital Accounts of the Members shall be adjusted in the nature of a "book-up" so as to be in proportion to their new respective Percentage Interests, and (iii) subsequent allocations of income, gain, loss, and deduction with respect to each Real Property shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value (as defined in Exhibit A) in the same manner as under Code section 704(c) and the Treasury Regulations thereunder, using such methods with respect to allocations relating to the Real Property as determined by the Managing Member in its reasonable discretion with the approval of Investor.

ARTICLE III
MEMBERS

3.01 Members.

(a) Effective as of the date of this Agreement, the Members of the Company shall be Investor and Sponsor. Except as expressly permitted by this Agreement, no other Person shall be admitted as a member of the Company and no additional Interest shall be issued, without the approval of all of the Members.

(b) Subject to the terms of this Agreement, Sponsor shall constitute the sole Managing Member of the Company. Without limiting the express terms of this Agreement, the Members and the members of the Executive Committee shall have no fiduciary duty towards each other, the Company or any Acquisition Vehicle. Managing Member shall have all the rights and powers of a "managing member" as provided in the Delaware Act and as otherwise provided by law. Persons dealing with the Company are entitled to rely conclusively on the power and authority of Managing Member as set forth in this Agreement.

3.02 Limitation on Liability. Except as otherwise expressly provided in the Delaware Act, the debts, obligations and liabilities of the Company or any Acquisition Vehicle, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company or such Acquisition Vehicle, and no Member shall be obligated personally for any such debt, obligation or liability of the Company or such Acquisition Vehicle solely by reason of being a member of the Company. Except as otherwise expressly provided in the Delaware Act, the liability of each Member shall be limited to the amount of Capital Contributions required to be made by such Member in accordance with the provisions of this Agreement, but only when and to the extent the same shall become due pursuant to the provisions of this Agreement. The failure of the Company or any Acquisition Vehicle to observe any limited liability company, limited partnership, or other formalities under the Delaware Act shall not be grounds for any Member, the Managing Member, any member of the Executive Committee, or any general partner, limited partner or manager of any Member, or any past, present or future officer, director, employee, incorporator, member, partner or equity holder of any of the foregoing or any of their Affiliates or any Person holding a direct or indirect interest in any of the foregoing or any of their Affiliates to be held liable or obligated for any debt, obligation or other liability of the Company or any Acquisition Vehicle. This Section 3.02 shall survive the termination and dissolution of the Company and this Agreement.

ARTICLE IV
CAPITAL

4.01 Capital Contributions.

(a) Prior to the date here, Sponsor, on behalf of Owner, has funded [redacted] towards the ownership, management and operation of the Project, which amounts shall constitute a portion of Sponsor's Initial Capital Contribution hereunder, as set forth in Schedule 4.01(a).

(b) Concurrently with the execution of this Agreement, Investor shall contribute to the Company the amount of [redacted] as a portion of Investor's Capital Contributions hereunder as set forth in Schedule 4.01(a), and Sponsor shall receive a cash payment from such contribution in the amount of [redacted] such that as of the Effective Date, each Member's Capital

Contributions and Capital Account balances shall stand in proportion to their respective Percentage Interests.

(c) If at any time or from time to time, either Member reasonably determines that additional funds ("Mandatory Capital") are required (i) for costs contemplated by the Budget and Operating Plan, (ii) for Necessary Expenses, or (iii) to meet the ongoing obligations, liabilities, Expenses or reasonable business needs of the Company that are not provided for in the Budget and Operating Plan but that are agreed to by the Executive Committee, the Members shall make further capital contributions ("Additional Capital Contributions") in the amount of such Mandatory Capital. If so requested by a Member or the Executive Committee, each Member shall, within twenty (20) Business Days thereafter (or by any earlier date to prevent an adverse impact on the Project or the date required to make any deposit of borrower's funds required by any Loan documents that have been approved by the Executive Committee), contribute its pro rata share (based upon the Percentage Interests of the Members at the time of such request) of the amount of the applicable Mandatory Capital. The Initial Capital Contributions and the Additional Capital Contributions shall be made by wire transfer of funds to a Company account (or other escrow account) designated by the Executive Committee. The initial determination of the amount of Mandatory Capital required to fund Additional Capital Contributions shall be based upon the Initial Budget and Operating Plan that is approved by Executive Committee prior to the Effective Date.

(d) If any Member (the "Non-Contributing Member") fails to make all or any portion of an Additional Capital Contribution in the time required pursuant to Sections 4.01(c) above, then one or more of the other Members that is not an Affiliate of the Non-Contributing Member (individually, each a "Contributing Member" and collectively the "Contributing Member") may make such Additional Capital Contribution (the Non-Contributing Member's share of such Additional Capital Contribution so made by a Contributing Member, a "Substitute Contribution"). Within thirty (30) days after making a Substitute Contribution, a Contributing Member shall elect (the "Substitute Contribution Election"), by written notice to the Non-Contributing Member, to either (i) treat the entire amount of such Substitute Contribution as a loan (a "Member Loan") to the Non-Contributing Member by such Contributing Member in accordance with the provisions of Section 4.01(e)(i) below, or (ii) only during the Post-Construction Commencement Period, dilute the Percentage Interest of the Non-Contributing Member in accordance with Section 4.01(e)(ii) below (the "Dilution Option"). If no election is made by such deadline, the Contributing Member shall be deemed to have elected to treat the Substitute Contribution as a Member Loan. Additionally, if during the Predevelopment Period, Investor fails to timely make all or any portion of the Capital Contribution set forth in Sections 4.01(b) or (c), or fails to make the Percentage Interest True-Up Payment, while such amounts are outstanding, Investor's appointees to the Executive Committee shall have no voting rights on any Major Decisions; provided that, upon Investor's curing of any failure to timely make all or any portion of the Capital Contribution set forth in Sections 4.01(b) or (c), the right of Investor's appointees to the Executive Committee to vote on Major Decisions shall be revived in full.

(e) Terms of Member Loan or Dilution Option.

(i) Member Loan. If a Contributing Member elects to make a Member Loan, or is deemed to have made a Member Loan, then such Member Loan shall be deemed to

constitute a loan made by the Contributing Member to the Non-Contributing Member in accordance with the terms hereof, immediately followed by a Capital Contribution of such Non-Contributing Member. Any Member Loan shall be repaid directly by the Company from Revenue, the proceeds of liquidation or any other amounts that would otherwise be distributable or payable to the Members, as soon as is reasonably practicable and prior to any distribution or payment thereof pursuant to this Agreement and shall bear interest at the rate of fifteen percent (15%) per annum. At any time, a Non-Contributing Member may tender full payment of a Member Loan (and accrued interest) to the applicable Contributing Member. Payments on account of any such Member Loans shall be made in the order in which such Member Loans were made. At the request of the Contributing Member, the Non-Contributing Member shall execute a note providing for the terms set forth herein (it being understood that each such Member Loan shall be a binding obligation of the Non-Contributing Member regardless of whether a note is so requested, or if so requested, if a note is executed and delivered).

(ii) Dilution.

(A) If a Contributing Member elects the Dilution Option then (X) the Percentage Interest of the Contributing Member shall be increased by the number of percentage points determined by dividing the Dilution Numerator applicable to such Member by the Dilution Denominator applicable to such Member, and (Y) the Percentage Interest of the Non-Contributing Member shall be decreased by the number of percentage points by which the Contributing Member's Percentage Interest is increased pursuant to subclause (X) hereof. For purposes of this Agreement, (1) "Dilution Numerator" means one hundred fifty percent (150%) of the amount of the Substitute Contribution; and (2) "Dilution Denominator" means one hundred percent (100%) of the aggregate Capital Contributions then or theretofore made by all of the Members to the Company.

(f) Any Non-Contributing Member to whom a Member Loan is made hereby grants to the Contributing Member that provided such Member Loan, as secured party, a security interest in such Non-Contributing Member's Interest to secure its obligation to repay such Member Loan in accordance with the provisions of Section 4.02(e), and does hereby irrevocably constitute and appoint the Company and the authorized agents and officers thereof, its true and lawful attorneys-in-fact, coupled with an interest, with full power to prepare and execute any documents, instruments and agreements, and such financing, continuation statements, and other instruments and documents as may be appropriate to perfect, continue and enforce such security interest in favor of the Company. Such security interest is granted for the sole purpose of establishing the priority of the Contributing Member's claim to distributions that would otherwise be made to the Non-Contributing Member. Under no circumstance will a Contributing Member have the right to foreclose on the Interest of the Non-Contributing Member.

(g) Each Member acknowledges and agrees that the other Members would not be entering into this Agreement were it not for (i) the Members agreeing to make the Capital Contributions provided for in this Section 4.01 and (ii) the remedy provisions set forth above in this Section 4.01. Each Member acknowledges and agrees that in the event any Member fails to make its Capital Contributions pursuant to this Agreement, the other Members will suffer

substantial damages and the remedy provisions set forth above are fair, just and equitable in all respects.

(h) Percentage Interest True-Up Payment. Within twenty (20) Business Days following the commencement of the Post-Construction Commencement Period, Investor shall pay to Sponsor a cash payment (such payment, the "Percentage Interest True-Up Payment"), in an amount equal to the difference between (i) Sponsor's aggregate Capital Contributions made as of the date of the Percentage Interest True-Up Payment, and (ii) five percent (5%) of the aggregate Capital Contributions made by all Members as of such date, such that after such payment, Sponsor shall have a five (5%) Percentage Interest, and Investor shall have a ninety-five percent (95%) Percentage Interest. Without limiting any other provisions of this Agreement, if Investor fails to make such payment within the timeframe above, such amount shall be treated as a Member Loan from Sponsor to Investor, which shall accrue at the rate of fifteen percent (15%) per annum and otherwise be treated as a Member Loan under this Agreement.

4.03 Capital Accounts. A separate Capital Account will be maintained for each Member in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). Consistent therewith, the Capital Account of each Member will be determined and adjusted as follows:

(a) Each Member's Capital Account will be credited with:

(i) Any contributions of cash made by such Member to the capital of the Company plus the fair market value of any property contributed by such Member to the capital of the Company (net of any liabilities to which such property is subject or which are assumed by the Company);

(ii) The Member's distributive share of Net Profit and any items in the nature of income or gain specially allocated to such Member pursuant to Section 6.01 and Exhibit A; and

(iii) Any other increases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(b) Each Member's Capital Account will be debited with:

(i) Any distributions of cash made from the Company to such Member plus the fair market value of any property distributed in kind to such Member (net of any liabilities to which such property is subject or which are assumed by such Member);

(ii) The Member's distributive share of Net Loss and any items in the nature of expenses or losses specially allocated to such Member pursuant to Section 6.01 and Exhibit A; and

(iii) Any other decreases required by Treasury Regulation Section 1.704-1(b)(2)(iv).

(c) The Capital Account balances of each Member shall be determined in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(*f*). Any expenses borne by

a Member for its own account will not increase such Member's Capital Account, nor affect its share of Net Profits or Net Losses. The provisions of this Section 4.03 and any other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Section 704(b) of the Code and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions.

4.04 No Further Capital Contributions. Except as expressly provided in this Agreement or with the prior written consent of the Members, no Member shall be required or entitled to contribute any other or further capital to the Company, nor shall any Member be required or entitled to loan any funds to the Company. No Member will have any obligation to restore any negative balance in its Capital Account at any time including upon liquidation or dissolution of the Company. However, if any Member enters into an agreement to contribute to the capital of the Company all or a portion of any deficit balance in such Member's Capital Account at such time as such Member's interest is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) or otherwise, such agreement shall be incorporated herein for all purposes of this Agreement.

4.05 Loans. The Managing Member, on behalf of the Company or its Acquisition Vehicles, may apply for and secure one or more construction loans for the Real Property. Any such loan shall be at a commercially reasonable rates and terms which are acceptable to the Executive Committee (the "Loan"). Any such Loan shall be subject to the prior approval of the Executive Committee. To the extent that any guaranties or indemnities ("Guaranties") are required in connection with any Loan, the Members (and their creditworthy Affiliates) shall cooperate in good faith to provide the Guaranties to the satisfaction of the lender under such Loan (the "Lender"), it being acknowledged and agreed that the form and content of such Guaranties, and the guaranty fees payable to any Person providing a Guaranty (each, a "Guarantor"), shall be subject to the approval of such Guarantor in its sole discretion, provided in no event shall any Guarantor be required to provide a repayment guaranty, unless agreed to by such Guarantor in its sole discretion. Notwithstanding the foregoing, to the extent that a Guaranty is required of ESK or its Affiliates as Guarantor of any Loan, Investor shall be entitled to an annual fee (the "Guaranty Fee") payable by the Company to Investor equal to one percent (1%) of the total amount of the Loan received by the Company (or its subsidiary) during such year. The Guaranty Fee shall be paid in arrears on the first (1st) anniversary of the closing of such Loan, and each anniversary of such date thereafter, and shall be prorated for any partial years based on the actual number of days elapsed in a given year while the Loan is outstanding and the number of days in such year. The Members agree to make such reasonable changes to this Agreement (including the creation of any single-purpose subsidiaries to hold title, directly or indirectly, to the Real Property) as may be requested by the Lender, provided that such changes shall not alter the economic terms, or any fundamental rights of the Members, set forth herein.

ARTICLE V
INTERESTS IN THE COMPANY

5.01 Return of Capital. No Member shall be liable for the return of the Capital Contributions (or any portion thereof) of any other Member, it being expressly understood that any

such return shall be made solely from the assets of the Company. No Member shall be entitled to withdraw or receive a return of any part of its Capital Contributions or Capital Account, to receive interest on its Capital Contributions or Capital Account or to receive any distributions from the Company, except as expressly provided for in this Agreement or under applicable law. No Member shall have any obligation to restore any negative balance in its Capital Account.

5.02 Ownership. All Company Property shall be owned by the Company or an Acquisition Vehicle, subject to the terms and provisions of this Agreement. Title to Company assets shall be held by the Company in the Company's name or, if the Company makes any Acquisition Vehicle Election, by an Acquisition Vehicle.

5.03 Waiver of Partition; Nature of Interests in the Company. Except as otherwise expressly provided for in this Agreement, each of the Members hereby irrevocably waives any right or power that such Member might have:

(a) To cause the Company or any of its assets to be partitioned;

(b) To cause the appointment of a receiver for all or any portion of the assets of the Company;

(c) To compel any sale of all or any portion of the assets of the Company pursuant to any applicable law; or

(d) To file a complaint, or to institute any proceeding at law or in equity, to cause the termination, dissolution or liquidation of the Company.

Each of the Members has been induced to enter into this Agreement in reliance upon the waivers set forth in this Section 5.03, and without such waivers no member would have entered into this Agreement. No Member shall have any interest in any specific Company Property. The interests of all Members in this Company are personal property.

ARTICLE VI
ALLOCATIONS AND DISTRIBUTIONS

6.01 Allocations. The allocation of the Company's Net Profits and Net Losses (and other items of "book" profits and losses) and taxable income and losses shall be determined in accordance with the provisions of Exhibit A.

6.02 Distributions. The Company shall, at the direction of the Executive Committee and subject to the establishment of any required reserves as set forth in the definition of Expenses, make distributions of Net Cash Flow to the Members in the following manner and order of priority:

(a) Distribution of Net Cash Flow. Distributions of Net Cash Flow shall be as follows:

(i) First, to the Members in proportion to their respective Percentage Interests until each Member has received a return of its accrued but unpaid Preferred Return.

(ii) Second, to the Members, in accordance with their unreturned actual Capital Contributions made by such Member, if any, until such time as the unreturned Capital Contributions of the Members has been reduced to zero.

(iii) Third, to the Members, in the following proportions: (A) seventy-five percent (75%) to the Members in proportion to their respective Percentage Interests, and (B) twenty-five percent (25%) (the "Promote Payment") to Sponsor.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent there exist any outstanding Member Loans at the time of a distribution pursuant to Section 6.02(a), any amounts that would be distributed to the Non-Contributing Member pursuant to such distribution shall be paid to the Contributing Member until any outstanding Member Loans have been repaid in full including any accrued interest (but shall be treated as paid to the Non-Contributing Member for purposes of applying Section 6.02(a)), and any distributions made prior to Investor making the Percentage Interest True-Up Payment under Section 6.02(a) shall be based on the amount of actual Capital Contributions made by the Members at the time of any such distribution.

(c) If Sponsor is terminated as Managing Member following a For Cause event pursuant to the terms of this Agreement, distributions of Net Cash Flow shall be thereafter made to the Members pro rata in accordance with their respective Percentage Interests.

(d) Notwithstanding anything to the contrary in Section 6.02(a), to the extent that Net Cash Flow is available, as determined by the Executive Committee, the Company shall distribute to each Member with respect to each taxable year (at the times estimated taxes are due and prior to the due date of the tax return for the taxable year) sufficient funds to enable such Member (or the direct or indirect individual members or partners of such Member, as the case may be) to pay any federal, state and local income taxes in respect of taxable income of the Company allocated to such Member for such taxable year using the Assumed Tax Rate; provided that for purposes of calculating the amount of distribution due to each Member pursuant to this Section 6.02(d) for each taxable year, the Company shall take into account (i) taxable losses allocated to such Member (and any previous transferor) for prior taxable years and not previously taken into account under this Section 6.02(d), and (ii) any amounts previously distributed to such Member pursuant to Section 6.02(a) for such taxable year. Distributions made under this Section 6.02(d) shall be treated as advances against and shall reduce the next amounts otherwise distributable to the Members pursuant to Section 6.02(a). The Company shall not make distributions pursuant to this Section 6.02(d) in the taxable year in which all or substantially all of the assets of the Company are sold or in the year in which the Company is liquidated.

6.03 Tax Matters. The Members intend and agree for the Company to be treated as a partnership solely for federal (and applicable state and local) income tax purposes. The Investor shall have the authority to make or approve all applicable elections, determinations and other decisions under the Code and applicable Treasury Regulations, including, without limitation, the deductibility of a particular item of expense and the positions to be taken on the Company's tax return, provided that the approval of the Executive Committee shall be required for the approval of any settlement or compromise of audit matters raised by the Internal Revenue Service. The Members shall each take reporting positions on their respective federal, state and local income tax returns consistent with the positions determined for the Company by the Managing Member with

the approval of Investor. The Managing Member shall cause all federal, state and local income and other tax returns to be prepared and timely filed by the Company. Investor shall have the right to approve the tax return before it is filed. The Members intend that the Promote Payment be characterized for federal income tax purposes as a "profits" interest in accordance with Revenue Procedure 93-27, and to the extent permitted by applicable law the Company and the Members shall each take reporting positions on their respective federal, state and local income tax returns consistent with such intent.

6.04 Partnership Representative. The Investor shall be "partnership representative" pursuant to Section 6223(a) of the Code (and for corresponding or similar provisions of applicable state or local tax law) and shall be entitled to designate another person to serve as the partnership representative. The Investor shall also designate the "designated individual" under the applicable Treasury regulations under the Code. The Members shall take any such actions required to institute the foregoing. Except as set forth herein, the partnership representative shall be entitled to exercise all rights, required, permitted or otherwise contemplated by Chapter 63, Subchapter C of the Code as amended by the Bipartisan Budget Act of 2015, provided that the partnership representative shall first obtain the approval of the Executive Committee prior to entering into any settlement of any audit by the Internal Revenue Service or making any elections, including an election under Section 6626 of the Code (a "Section 6226 Election"). If a Section 6226 Election is made, the partnership representative shall provide to the Members the Members' respective shares of any adjustment to income, gain, loss, deduction or credit as determined in the notice of final partnership adjustment. Notwithstanding anything contained herein, each Member (whether or not such Member remains a member of the Company in the adjustment year) agrees to indemnify the Company for its allocable share (as determined by the partnership representative in consultation with the Company Accountant), of any federal income tax liability (and any related interest or penalties) assessed against the Company (which payment shall not constitute a Capital Contribution). At the election of the Executive Committee, the Company shall be entitled to reduce distributions that would otherwise be made to a Member in part or full satisfaction of such Member's allocable share of any such tax liability (and any related interest or penalties) assessed against the Company. For purposes of the preceding sentence, any successor in interest of a Member (or such successor's successor in interest (continuing for each successor)) shall be considered to be the Member that would otherwise have been subject to the reduction in distribution. All reasonable costs and expenses of the partnership representative shall be borne by the Company. The partnership representative shall use commercially reasonable efforts to keep the other Member informed regarding any material matter raised by or involving its interaction with the Internal Revenue Service and will use commercially reasonable efforts to consult with the other Member regarding material actions taken or to be taken in connection therewith. The provisions in this Agreement, including Article X, limiting the liability of and providing indemnification for a Member shall be fully applicable to the Investor (or its designee) in its capacity as partnership representative. The covenants contained in this Section 6.04 will survive the Transfer of the Interest of any Member and the termination of the Company.

6.05 Withholding. All amounts required to be withheld and/or paid to a taxing authority in respect of a Member pursuant to Section 1446 of the Code or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to such Members for all purposes under this Agreement. If any amount required to be paid to a taxing authority exceeds the amount of any distribution being made to the Member (which distribution the Company may

reduce to satisfy the obligation) the Member as to which the obligation applies shall contribute cash to the Company in an amount sufficient to satisfy such obligation.

ARTICLE VII
MANAGEMENT

7.01 Management. The Members hereby designate Sponsor as the Managing Member of the Company subject to the rights of Investor and the Executive Committee as provided herein. Any reference to the Managing Member in this Agreement shall refer to the Member then serving as Managing Member. The Managing Member shall be the "manager" of the Company for purposes of the Delaware Act. Except as provided in Section 7.02 and Section 7.03 hereof and for those other matters expressly required under this Agreement to be approved by the Executive Committee, and/or any of the other Members, all decisions with respect to the management of the Company made by the Managing Member shall be binding on the Company and each of the Members. The Managing Member shall conduct or cause to be conducted the ordinary and usual business and affairs of the Company in accordance with the Delaware Act and subject to the Budget and Operating Plan from time to time approved by the Executive Committee and otherwise in accordance with this Article 7. The Managing Member is an agent of the Company for the purpose of its business, for purposes of the execution in the name of the Company of any instrument for carrying on in the usual way the business of the Company and the Managing Member's acts bind the Company, unless such act is in contravention this Agreement.

(a) Except as otherwise expressly provided in this Agreement or as otherwise previously approved by the Executive Committee, or provided for in any Budget or Operating Plan, the following decisions, shall require the prior approval of the Executive Committee (as defined below):

(i) The execution and delivery by an Acquisition Vehicle or the Company of any material agreements with any governmental agency, any neighboring or adjacent property owner, any community organizations or any other third parties**,** or sending any material correspondence to or having any other material communications with, any governmental agency which directly binds the Company or advocates a position on behalf of the Company;

(ii) Any financing, refinancing or securitization of any Company Property (including without limitation, the Loan) and the use of any proceeds thereof, including, without limitation, interim and permanent financing, and any other financing or refinancing of the operations of the Company or an Acquisition Vehicle and the execution and delivery of any documents, agreements or instruments evidencing, securing or relating to any such financing; provided, however, that no guarantees, environmental indemnities or credit enhancements can be required from any Member or its Affiliates without such party's consent to the terms of the financing secured by such documents;

(iii) The approval of any Budget and Operating Plan, and any amendments or modifications thereto (which shall only be permitted in accordance with this Agreement); it being acknowledged and agreed that each Budget and Operating Plan must reasonably provide for uncontrollable expenses such as non-disputed property taxes, insurance premiums for policies approved by the Executive Committee and utilities;

(iv) Only to the extent not included in an approved Budget or Operating Plan or otherwise required for utility service or regulatory approval of any then-existing development plans for any of the Real Property, approval of all applications for any zoning or land-use changes or modifications, including without limitation, the strategy of the Company with regard to submitting and processing such applications and approval of all conditions to any such zoning or land-use changes or modifications;

(v) The approval of all covenants, conditions and restrictions encumbering the Real Property, the formation or joining of any community facilities districts or other assessment districts, owners' association to manage and/or own common areas of the Project, including, without limitation, taking any action with respect to such encumbrances or association that would affect the Company or any Acquisition Vehicle's rights or obligations with respect to such encumbrances or association, and all applications for any entitlements, permits (including any demolition permits), approvals, zoning, subdivision map or land-use changes or modifications, including, without limitation, the strategy of the Company or Owner with regard to submitting and processing such applications and approval of all conditions to any such entitlements, permits, approvals, zoning, subdivision map or land-use changes or modifications;

(vi) From and after the Lockout Date and subject to Section 9.05 below, any sale of Company Property or any part thereof;

(vii) Any lease, including any ground lease, of any space within the Company Property, or any amendment or modification thereto or any termination thereof to the extent not set forth on a form lease previously approved by the Executive Committee (with such reasonable changes requested by the parties thereto), and on terms consistent with the Budget and Operating Plan;

(viii) The making of any recurring operating expenditure or incurring of any recurring operating obligation by or on behalf of the Company or any Acquisition Vehicle that varies materially from the Budget or entering into (or amending or modifying) of any agreement which was not specifically included or contemplated in the Budget or under the Operating Plan, or otherwise approved by the Executive Committee (for purposes of this Section 7.01(a)(viii), such a material variance shall be (A) expenditures or obligations involving an amount that is in excess of the amount set forth on a quarterly basis or on an annual basis in the Budget for such expenditure on a line item basis by more than (i) 5% of the applicable line item in the Budget for such expenditure, or (ii) $250,000, whichever is less for such period; (B) expenditures or obligations involving an amount that would result in the Company exceeding its aggregate annual Budget by more than $1,000,000; or (C) in the case of any material service, maintenance or similar agreement proposed to be entered into, such agreement is not terminable (without penalty) by the Company or any Acquisition Vehicle on sixty (60) calendar days or less written notice to the other party; provided, however, that expenditures made or obligations incurred or agreements entered into pursuant to, or which are specifically included in or contemplated under, the Budget or Operating Plan shall not be Major Decisions to the extent they do not vary (other than immaterial variances) from the Budget and Operating Plan);

(ix) Entering into or consummating any transaction or arrangement with any Member or any Affiliate of any Member, or any other transaction involving an actual or

potential conflict of interest, all of which shall require the approval of the non-interested Member(s) notwithstanding anything contained herein to the contrary;

(x) The establishment of reasonable reserves, in excess of the reserves set forth in the Budget and Operating Plan;

(xi) The institution of any legal proceedings in the name of the Company or an Acquisition Vehicle, settlement of any legal proceedings against the Company or an Acquisition Vehicle and confession of any judgment against the Company, an Acquisition Vehicle or any property of the Company or an Acquisition Vehicle; provided, however, that approval shall not be required with respect to the institution of any legal proceedings with an amount in controversy of less than $50,000 or which are covered by insurance or of tenant eviction suits for breach of tenant leases, and the engagement of attorneys for the same;

(xii) The engagement, changing or removal of the general contractor or architect of record;

(xiii) The appointment, change or removal of the auditors of the Company, Owner, or any Acquisition Vehicle;

(xiv) voluntarily agree to any condemnation or eminent domain proceeding affecting the Real Property or any material portion thereof or to the settlement of any claim relating thereto;

(xv) Any determination of fees or amounts payable pursuant to Section 7.03(a) through (c) below;

(xvi) Any election to commence vertical construction upon any Pad;

(xvii) Entering into, on behalf of the Company: (A) any Definitive Agreement (as defined in the ENA); (B) any other material agreement with the City and other governmental authorities to acquire the Real Property or develop the Project; and (C) any agreement to develop the affordable housing component of the Project with the Affordable Housing Developer including any Definitive Documents as defined in the Chelsea MOU; and

(xviii) Any action by Owner or any Acquisition Vehicle which, if taken by the Company, would be a Major Decision under any other provision of this Section 7.01(a).

(b) The Company may employ, engage or retain any Persons (including any Affiliate of any Member) to act as brokers, accountants, attorneys, engineers or in such other capacities as the Managing Member may determine are necessary or desirable in connection with the Company's business, and the Managing Member, the members of the Executive Committee, the Managing Member shall be entitled to rely in good faith upon the recommendations, reports and advice given them by any such Persons in the course of their professional engagement.

(c) Anything in this Agreement to the contrary notwithstanding, no Member shall have authority to perform (or instruct any Member to perform) any act in respect of the Company in violation of any applicable laws or regulations.

(d) Anything in this Agreement to the contrary notwithstanding, neither the Executive Committee nor the Managing Member shall, without the written consent or ratification of the specific act by each of Investor and Sponsor, cause or permit the Company to:

(i) (A) make a filing of any voluntary petition in bankruptcy on behalf of the Company or any Acquisition Vehicle, (B) consent to the filing of any involuntary petition in bankruptcy against the Company or any Acquisition Vehicle, (C) file any petition seeking, or consenting to, the reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (D) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or of an Acquisition Vehicle or a substantial part of its property, (E) make a general assignment for the benefit of creditors, (F) admit in writing of the Company's or an Acquisition Vehicles' inability to pay its debts generally as they become due, or (G) take of any action by the Company or any Acquisition Vehicle in furtherance of any such action;

(ii) the amalgamation, merger, arrangement or other corporate reorganization of the Company;

(iii) make any loans to any Member or its Affiliates;

(iv) allow any transfers of the Real Property in violation of any loan documents;

(v) amend this Agreement;

(vi) acquire any additional property or interest in property other than the Company's interest in the Real Property and other property that is directly related to the operation of the Real Property;

(vii) do any act in contravention of this Agreement or which would make it impossible to carry out the business of the Company or an Acquisition Vehicle;

(viii) change the nature of the business conducted by the Company or its purposes as described in Section 2.05 hereof;

(ix) confess to any judgment (but not including settlements) against the Company;

(x) extend the term of the Company, Owner or any Acquisition Vehicle;

(xi) take any action that causes liability under Guaranties or any action that would violate an affirmative or negative covenant or other provision of a document evidencing a Loan;

(xii) enter into or consummate any transaction or arrangement with any Member or any Affiliate of any Member, all of which shall require the approval of the non-interested Member(s) notwithstanding anything contained herein to the contrary;

(xiii) enter into, modify, amend or extend any contract between the Company, or Owner, on the one hand, and a Member or its Affiliate, on the other hand, except as otherwise provided in this Agreement;

(xiv) make any tax election, or change any previously made tax election, of the Company if the same is materially and disproportionately adverse to any Member when compared to the impact on the other Members;

(xv) cause the Company to make any distribution of Company property in kind to any Member or otherwise make distributions to Members other than as required or permitted in this Agreement; and

(xvi) sell any Company Property prior to the Lockout Date.

(e) Members of the Executive Committee. Certain affairs and matters of the company shall be managed by a committee of persons appointed in writing (the "Executive Committee"). The Executive Committee may elect officers of the Company to implement the decisions (including without limitation executing documents) of the Executive Committee from time to time, provided, however, that the Managing Member shall be responsible for performing, or for causing to be performed, and shall have the authority to perform (subject to the requirement of receiving Investor's or Executive Committee's consent, as applicable, if and when required by the terms hereof), the duties described in Section 7.03. The Executive Committee shall consist of three (3) members. The initial members of the Executive Committee shall be Otto Maly and Jason Gannon appointed by Investor, and Brad Termini appointed by Sponsor; provided that Legends, Zephyr and Investor shall be entitled to have an additional non-voting representative present during any meeting of the Executive Committee. Each Member may, by written notice to the others, remove any such Member's representative on the Executive Committee and appoint a substitute therefor.

(f) Regular meetings of the Executive Committee shall be held at such times and places as shall be designated from time to time by resolution of the Executive Committee, provided such regular meetings of the Executive Committee shall be as often as necessary or desirable to carry out its management functions, it being agreed that the Executive Committee shall meet not less than once per calendar quarter (unless waived by each of Sponsor and Investor).

(g) Special meetings of the Executive Committee may be called by or at the request of any Member. The person or persons authorized to call the special meeting of the Executive Committee may fix any reasonable place as the place for holding the special meeting of the Executive Committee, or such meeting may occur telephonically as provided in Section 7.01 at the request of any member of the Executive Committee electing to participate telephonically.

(h) Notice of any meeting of the Executive Committee shall be given to each Member no fewer than ten (10) days and no more than thirty (30) days prior to the date of the meeting. Notices shall be delivered in the manner set forth in Section 12.03 hereof. The attendance of a member of the Executive Committee at a meeting of the Executive Committee shall constitute a waiver of notice of such meeting, except where a member of the Executive Committee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting

is not properly called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Executive Committee need be specified in the notice or waiver of notice of such meeting.

(i) Provided that notice of a meeting has been given to each Member as called for by this Section 7.01, a majority (in number) of the voting members of the Executive Committee shall constitute a quorum for transaction of business at any meeting of the Executive Committee, provided that, a quorum may not be deemed established without the presence of at least one Executive Committee voting member appointed by each of Investor and Sponsor; provided, however, that if Investor's appointees do not have any voting rights pursuant to the terms of Section 2.05(e), Section 4.01(d) or Section 4.02(h), the presence of Sponsor's sole voting member shall constitute a quorum of the Executive Committee.

(j) Provided that notice of a meeting has been given to each Member as called for by paragraph (d), above, the act of a majority (in number) of the members of the Executive Committee present shall be the act of the Executive Committee, unless the act of a greater number is required by this Agreement; and no action shall be deemed to have taken place unless a majority of the members of the Executive Committee shall have approved the same; provided, however, that no Major Decision or other matter which requires the Executive Committee's approval may be decided, nor may any Executive Committee action be taken, without the attendance at the applicable meeting of, and the vote of, an Executive Committee member appointed by Investor; and provided further that, in the event there is a disagreement between the Executive Committee members appointed by Sponsor and the Executive Committee members appointed by Investor with respect to any Major Decision or any other matter requiring the vote, consent or approval of the Executive Committee, Investor members of the Executive Committee shall have the right to cast the deciding vote and thus the decision made by Investor shall be deemed the decision of the Executive Committee, irrespective of the actual number of members of the Executive Committee appointed by Investor that are present at such meeting (or taking part in any Executive Committee action by written consent), or of the number of contrary votes cast by the members of the Executive Committee not appointed by Investor.

(k) Any action required to be taken at a meeting of the Executive Committee or any other action which may be taken at a meeting of the Executive Committee may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by a majority in number of the members of the Executive Committee entitled to vote with respect to the subject matter thereof. Provided that such notice is given to each Member, any such consent signed by a majority in number of the members of the Executive Committee shall have the same effect as an act of a majority (in number) of the members of the Executive Committee at a properly called and constituted meeting of the Executive Committee at which all of the members of the Executive Committee were present and voting.

(l) The members of the Executive Committee may participate in and act at meetings of the Executive Committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meetings shall constitute attendance in person at the meeting of the person or persons so participating.

(m) Except as expressly provided in this Agreement or as otherwise determined by the Executive Committee or as approved as part of the Budget (except that the consent of all disinterested Members shall be required in the case of fees, salaries or remuneration of any type), no member of the Executive Committee, nor officer of the Company, nor employee, agent or contractor of any Member or any Affiliate thereof (other than the Company), shall be entitled to receive any salary or any remuneration or expense reimbursement from the Company for his or her services as a member of the Executive Committee or for his or her services to the Company or with respect to the Company Property.

(n) The Executive Committee may, by resolution, designate one or more individuals as employees or agents of the Company in furtherance of its business and exclusive purposes. No such employee or agent need be a Member of the Company. Each employee or agent shall have the authority and shall perform the duties as designated by the Executive Committee. Any employee or agent so appointed by the Executive Committee may be removed by the Executive Committee in its sole discretion. The Members hereby adopt the resolutions attached to this Agreement as Schedule A, authorizing certain officers to act on behalf of the Company, as is more particularly described on Schedule A, and the Members acknowledge that the Executive Committee may elect additional officers of the Company or officers for Owner, and any Acquisition Vehicle to implement the decisions (including without limitation executing documents) of the Executive Committee from time to time. Pursuant to such delegation, the Managing Member shall be responsible for performing, or for causing to be performed, and shall have the authority to perform the duties described in Section 7.02.

(o) The Managing Member shall prepare a proposed agenda for each meeting of the Executive Committee, and will distribute such agenda to each member of the Executive Committee at least three (3) Business Days in advance of any meeting. The Executive Committee may amend such agenda as it sees fit. A written record of all meetings of the Executive Committee and all decisions made by it shall be made by the Managing Member, as Secretary of the Executive Committee, and kept in the records of the Company and shall be initialed or signed by each of the members of the Executive Committee present at such meeting to evidence the Executive Committee's approval of any Major Decision. The approval of any Budget and Operating Plan will be evidenced by the signing or initialing of a copy of the approved version by at least a majority (in number) of the members of the Executive Committee. Minutes and/or resolutions of the Executive Committee when initialed or signed by a majority (in number) of the members of the Executive Committee shall be binding and conclusive evidence of the decisions reflected therein and any authorizations granted thereby.

7.02 Managing Member.

(a) The Managing Member shall (i) conduct the business of the Company and each Acquisition Vehicle on a day-to-day basis, including, without limitation land planning, political strategy, community engagement, public relations, design, and permitting and use commercially reasonable efforts to cause such operations to be conducted in accordance with the Budget and the Operating Plan and such other guidelines as shall be adopted by the Executive Committee, which duties may be discharged by delegating the same to the asset or development management agreements, (ii) perform the duties assigned to it hereunder, and (iii) carry out all decisions and resolutions of the Executive Committee. The initial Managing Member shall be Sponsor, which

shall remain the Managing Member unless Sponsor is removed as Managing Member following a For Cause event. The Managing Member shall have no authority to retire or resign from its position as the Managing Member. In the event the Managing Member is removed following a For Cause event, the holders of a majority of the Percentage Interests held by Persons other than the Managing Member that was removed For Cause (and its Affiliates) shall appoint a replacement thereof, which replacement shall be the non-Managing Member or an Affiliate thereof (and which successor Managing Member shall be subject to the same For Cause removal provisions set forth herein). Subject to the limitations set forth in this Agreement and the guidelines adopted by the Executive Committee, the Managing Member, on behalf of the Company, shall have the power and authority to enter into contracts on behalf of the Company or any Acquisition Vehicle in accordance with the current Budget and Operating Plan, to make expenditures as are required to implement such Budget and Operating Plan, but only to the extent that any such expenditures do not constitute Major Decisions. The Managing Member may rely on written instructions (including by e-mail) from a representative appointed in writing by the non-Managing Member from time to time that the non-Managing Member has (and that its Executive Committee members have) approved certain actions and agreements. Jason Gannon is hereby appointed as such initial representative of Investor in its capacity as the initial non-Managing Member. Subject to the Managing Member's right to charge certain matters to the Company as provided in Section 8.01 and 8.03, the Managing Member shall not be entitled to receive any fees or other compensation in respect of its activities as the Managing Member, and will not receive reimbursement for compensation payable to any of its employees or other direct or indirect overhead which may be attributable to the performance of its duties as the Managing Member, except as expressly provided for in the Budget.

(b) Notwithstanding anything to the contrary contained in Section 7.01(a)(vi), if following thirty (30) days after the beginning of any calendar year the Budget and Operating Plan or any item or portion thereof shall not have been approved by the Executive Committee, then:

(i) Any items or portions of the Budget and Operating Plan and amounts of expenses provided therein which have been so approved shall become operative immediately and the Managing Member shall be entitled to expend funds in accordance with those operative portions;

(ii) Any items or portions of the Budget and Operating Plan and amounts of expenses provided therein that are uncontrollable such as non-disputed property taxes, insurance premiums for policies approved by the Executive Committee and utilities shall become operative at their then current rate immediately and the Managing Member shall be entitled to expend funds in accordance with those operative portions; and

(iii) With respect to the Budget, the Managing Member shall be entitled to, and shall, expend, in respect of non-capital, recurring expenses in any month of the then-current calendar year, an amount equal to the budgeted amount for the corresponding month of the immediately preceding calendar year, as set forth on the immediately preceding calendar year Budget after giving effect to any dispositions or other material changes to the Company Property during the prior or current year; provided, however, that if any contract approved by the Executive Committee or entered into pursuant to the provisions hereof or any management agreements provides for an automatic increase in costs thereunder after the beginning of the then

current calendar year, then the Managing Member shall be entitled to expend the amount of such increase.

(c) In addition to and without limiting any other duties set forth in this Agreement, the Managing Member shall, subject to the availability of adequate funds therefor in the Budget and from Revenues, Capital Contributions or other sources, and provided that the Managing Member may delegate such obligations to any other third parties with whom the Company may contract pursuant to the terms hereof, and in accordance with the then current Budget and Operating Plan:

(i) Oversee, coordinate and process the operations, including without limitation, the management on a day-to-day basis of any and all of the assets which comprise the Company Property, prepare all communications with relevant third parties; and, subject to the terms of this Agreement manage the vertical construction of improvements on the Pads;

(ii) Subject to the availability of funds therefor, take all proper and necessary actions reasonably required to cause the Company, all Acquisition Vehicles and all third parties at all times to perform and comply with the provisions (including without limitation, any provisions requiring the expenditure of funds by the Company or an Acquisition Vehicle) of any loan commitment, agreement, mortgage, lease, or other contract, instrument or agreement to which the Company or any Acquisition Vehicle is a party or which affects any Company Property or the operation thereof;

(iii) Subject to the availability of funds therefor, pay in a timely manner all non-disputed operating expenses of the Company and each Acquisition Vehicle in accordance with the terms of the Budget and the Operating Plan or as otherwise provided herein;

(iv) Deposit all receipts from operations of the Company Property to a separate account established and maintained by the Managing Member in the name of the Company, and not commingle those receipts with any other funds or accounts of the Managing Member;

(v) If the Managing Member subcontracts with third parties or any of its Affiliates (at no cost to the Company unless approved by the Executive Committee) for the performance of any of the services to be performed by the Managing Member, then the Managing Member shall supervise and oversee the performance of the services performed by such third parties or Affiliates;

(vi) Authorize other persons to execute and deliver such documents on behalf of the Company as the Executive Committee may deem necessary or desirable for the Company's business, including, without limitation, guarantees and indemnities;

(vii) Perform, or cause to be performed, all of the Company's obligations under any agreement to which the Company or an Acquisition Vehicle is a party;

(viii) Enter into contracts on behalf of the Company and make expenditures as are required to operate and manage the Company and the Company Property, in

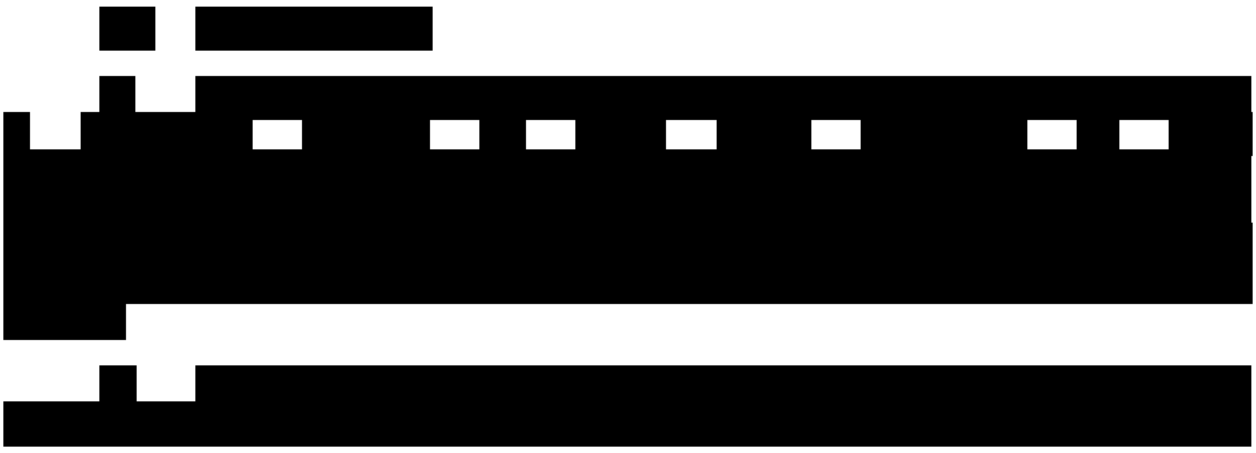
each case, to the extent consistent with the then current Budget and Operating Plan and subject to the provisions of Section 7.01 with respect to "Major Decisions"; and

(ix) Subject to Sections 7.01 and 7.03, do any act which is necessary or desirable to carry out any of the purposes of the Company.

(d) Every contract and instrument executed by the Managing Member shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder (other than the Members) that at the time of the delivery thereof: (a) the Company was in existence, (b) neither this Agreement nor the Certificate of Formation had been amended in any manner so as to restrict the delegation of authority among the Members to the Managing Member, and (c) the execution and delivery of such instrument was duly authorized by the Company. Any Person may rely on a certificate addressed to such Person and signed by the Managing Member hereunder: (i) setting forth the names of the Members hereunder; (ii) as to the existence or non-existence of any fact which constitutes a condition precedent to acts by the Members or the Managing Member or in any other manner germane to the affairs of the Company; (iii) setting forth the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company; (iv) certifying as to the authenticity of any copy of the Certificate of Formation, this Agreement, any amendments thereto and hereto and any other document relating to the conduct of the affairs of the Company; or (v) as to any action taken or not taken by the Company or as to any other matter whatsoever involving the Company, the Managing Member or any Member in their capacity as a Member or the Managing Member. Nothing contained in this Section 7.03(d) shall be deemed to expand the rights or authority of the Managing Member as expressly provided in this Agreement or to limit the approval rights of the Members as expressly provided in this Agreement.

(e) Sponsor's appointment as the Managing Member shall automatically terminate if Sponsor (or a Permitted Transferee thereof) no longer owns an Interest in the Company.

(f) Notwithstanding the contrary in this Section 7.02, Managing Member shall be responsible for preparing and submitting draw request packages for (i) any Loan to the Lender thereof, or (ii) any equity financing to an investor in the Company, Owner, a Pad JV Owner, or any Acquisition Vehicle (each, "Draw Request"); provided, however, that prior to submitting such Draw Request to such Lender or investor, Managing Member shall submit the proposed Draw Request to Investor for Investor's approval in its reasonable discretion.



7.04 Duties and Conflicts.

(a) The Members and their respective officers, employees, appointed members of the Executive Committee shall devote such time to the Company business as they deem to be necessary or desirable in connection with their respective duties and responsibilities hereunder. Except as provided hereunder or as otherwise agreed to in writing by the Executive Committee and all disinterested Members, no Member nor any member, partner, shareholder, officer, director, employee, agent or representative of any Member shall receive any salary or other remuneration for its services rendered pursuant to this Agreement.

(b) Each of the Members recognizes that each of the other Members and its members, managers partners, shareholders, officers, directors, employees, agents, representatives, appointed members of the Executive Committee and Affiliates, have or may have other business interests, activities and investments, some of which may be in conflict or competition with the business of the Company any Acquisition Vehicle and that each of the other Members and its members, managers, partners, shareholders, officers and directors, employees, agents, representatives, appointed members of the Executive Committee and Affiliates, are entitled to carry on such other business interests, activities and investments. Each of the Members may engage in or possess an interest in any other business or venture of any kind, independently or with others, including, without limitation, owning, financing, acquiring, leasing, promoting, developing, improving, operating, managing and servicing real property and mortgage loans on its own behalf or on behalf of other entities with which any of the Members is Affiliated or otherwise, and each of the Members may engage in any such activities, whether or not competitive with the Company or an Acquisition Vehicle, without any obligation to offer any interest in such activities to the Company or to the other Members. Neither the Company nor the other Members shall have any right, by virtue of this Agreement, in or to such activities, or the income or profits derived therefrom, and the pursuit of such activities, even if competitive with the business of the Company, shall not be deemed wrongful or improper.

7.05 Company Expenses. Except for any costs to be borne by any third party under any agreement with the Company or an Acquisition Vehicle, the Company shall be responsible for paying, and shall pay, all direct costs and expenses related to the business of the Company and each Acquisition Vehicle and of acquiring, holding, owning, developing, servicing, collecting upon and operating the Company Property. Subject to the preceding sentence, all fees and expenses payable under the management agreements, costs and expenses relating to any employees, staff or other personnel approved by the Executive Committee to provide day-to-day

operations and financial reporting to oversee the operations of the Company Property, costs of financing, fees and disbursements of attorneys, financial advisors, accountants, appraisers, brokers and engineers, and all other fees, costs and expenses directly attributable to the business and operations of the Company (excluding travel expenses) shall be borne by the Company. In the event any such costs and expenses are or have been paid by any Member, such Member shall be entitled to be reimbursed for such payment so long as such payment is reasonably necessary for Company business or operations and has been approved by the Executive Committee or is expressly authorized in this Agreement or the appropriate Budget or Operating Plan (including any permitted variance hereunder). Notwithstanding the foregoing, and without affecting any contrary terms (if any) in any asset or development management agreements, in no event shall the Company have any obligation to pay or reimburse any Member for any general overhead expense of such Member.

ARTICLE VIII
BOOKS AND RECORDS

8.01 Books and Records. The Managing Member shall maintain, or cause to be maintained, in a manner customary and consistent with GAAP or on a tax basis, practices and procedures, a comprehensive system of office records, books and accounts (which records, books and accounts shall be and remain the property of the Company) in which shall be entered fully and accurately each and every financial transaction with respect to the ownership, operation and development of the Company Property. Bills, receipts and vouchers shall be maintained on file by the Managing Member. The Managing Member shall maintain or cause to be maintained said books and accounts in a safe manner and separate from any records not having to do directly with the Company, any Acquisition Vehicle or any Company Property. The Managing Member shall, at the expense of the Company, cause audits to be performed and audited statements and income tax returns to be prepared as required by Section 8.03 (provided that the Managing Member shall, for so long as it diligently performs its obligations hereunder, not be responsible for the delays of any other non-Affiliated Member or reputable accountants or auditors retained by the Managing Member or at the request of the Executive Committee on behalf of the Company or at the request of the Executive Committee). Such books and records of account shall be prepared and maintained by the Managing Member at the principal place of business of the Managing Member or such other place or places as may from time to time be reasonably determined by the Executive Committee. Investor shall have the right, during normal business hours, to inspect the books, records and accounts of the Company, following reasonable advance written notice to the Managing Member of such request.

8.02 Accounting and Fiscal Year. The books of the Company shall be kept on the accrual basis in accordance with GAAP or on a tax basis, as determined by the Executive Committee, and shall report its operations for tax purposes on the accrual method. The fiscal year and tax year of the Company shall end on December 31 of each year, unless a different tax year shall be required by the Code.

8.03 Reports.

(a) The Managing Member will prepare, or cause to be prepared, at the expense of the Company, and furnish to each Member (provided that the Managing Member shall, for so long as

it diligently performs its obligations hereunder, not be responsible for the delays caused by force majeure or any other non-Affiliated Member or reputable accountants or auditors retained by the Managing Member or at the request of the Executive Committee on behalf of the Company) (i) within twenty (20) calendar days after the end of each calendar month, unless such month is the last month of any fiscal year, a status and financial report summarizing the activities of the Company and costs and revenues incurred and received by the Company during the previous month, (ii) as soon as possible following the end of each fiscal year, a reviewed financial statement for such year, including a balance sheet, an income statement, and a statement showing the Capital Account of each Member as of the end of such period and the distributions, if any, made to each Member, (iii) no later than twenty (20) days prior to the respective due date, draft Company tax returns and filings for review and comment, and (iv) within ninety (90) days after the end of each taxable year, final Company tax returns and Schedule K-1 for the preceding year.

(b) All decisions as to accounting principles shall be made by the Executive Committee, subject to the provisions of this Agreement.

8.04 The Company Accountant. The Company shall retain a tax accountant for the Company (the "Company Accountant") any nationally or regionally recognized accounting firm designated by the Managing Member with the approval of Investor. The fees and expenses of the Company Accountant shall be a Company expense.

8.05 The Budget and Operating Plan.

(a) Within sixty (60) days after the Effective Date, the Managing Member shall prepare, for Investor's approval, a budget and strategic operating plan (as approved, the "Initial Budget and Operating Plan") for the Company monthly through December 31, 2023, which sets forth all anticipated income, operating expenses, and capital expenditures of the Company, together with an exit or refinance valuation/strategy and projected quarterly/annual capital contributions and capital returns, stabilized cash-on-cash returns, and aggregate Preferred Rate of Return to each Member, all of which is based on the strategic and comprehensive business plan designed to maximize the Company's returns on the Company Property, and all of which shall be consistent with preliminary figures previously provided to the Executive Committee by the Managing Member. Thereafter, the Budget and Operating Plan shall be prepared in proposed form and submitted annually by the Managing Member to the Executive Committee for approval at least forty-five (45) calendar days prior to the end of each fiscal year with respect to the following fiscal year, together with five (5) year forward projections (provided if the Managing Member should fail to timely prepare and submit in proposed form any such Budget and Operating Plan, the Executive Committee shall be authorized to prepare such Budget and Operating Plan).

(b) The Managing Member will also consider and make recommendations to the Executive Committee (for its approval to the extent such action is a Major Decision), regarding any suggested or proposed amendment, modification, alteration, change, cancellation, or prepayment of any indebtedness evidenced by any mortgage loan presently or hereafter affecting any Company Property, and procurement of title insurance and other insurance for the Company, or decrease or vary the insurance carried by or on behalf of the Company and any other matters affecting the Company's business.

8.06 Accounts. All funds of the Company shall be deposited in such checking accounts, savings accounts, time deposits, or certificates of deposit in the name of the Company (or an Acquisition Vehicle) or shall be invested in the name of the Company (or applicable Acquisition Vehicle), in such manner as shall be designated by the Executive Committee. Company funds shall not be commingled with those of any other person or entity. Company funds shall be used only for the business of the Company.

ARTICLE IX
TRANSFER OF INTERESTS

9.01 No Transfer. Except as expressly permitted or contemplated by this Agreement, no Member may sell, assign, give, hypothecate, pledge, encumber or otherwise transfer ("Transfer") all or any portion of its Interest, whether directly or indirectly, without the written consent of the other Members. Any Transfer in contravention of this Article IX shall be null and void. No Member, without the prior written consent of the other Members, shall resign from the Company except as a result of such Member's involuntary dissolution or final adjudication as a bankrupt or in connection with a Transfer permitted by this Article IX.

9.02 Permitted Transfers.

(a) Subject to any necessary Lender and/or City approval, if required, and this Article IX, each Member may from time to time and in its sole discretion without the consent of any other Member, sell or assign its Interest (directly or indirectly) in whole or in part to any Permitted Transferee.

(b) Any permitted Transfer shall not relieve the transferor of any of its obligations prior to such Transfer. The parties hereto agree to amend the transfer provisions of Article IX if the Managing Member reasonably determines that such amendment is necessary for the Company to remain treated as a partnership for federal income tax purposes. Nothing contained in this Article IX shall prohibit a Transfer indirectly of any interest in the Company if a direct Transfer would otherwise be permitted under this Section 9.02. Subject to Section 9.02(c), any transferee pursuant to this Section 9.02 shall become a Member of the Company. The provisions of this Section 9.02 will not apply to or be deemed to authorize or permit any collateral transfer of, or grant of a security interest in, a Member's interest in the Company, or in Company Property or of an equity interest of an Acquisition Vehicle (which transfer or grant shall be subject to the other provisions of this Agreement).

(c) Anything herein to the contrary notwithstanding, no direct or indirect Transfer shall be permitted in any event which would (i) cause the Company to be treated as a publicly traded partnership within the meaning of Section 7704 of the Code and Treasury Regulation Section 1.7704-1; (ii) cause the Company to be classified other than as a partnership, or disregarded entity as applicable, for federal income tax purposes; (iii) cause a reassessment of Company Property for property tax purposes; (iv) cause the Company to incur unreimbursed real property transfer taxes; or (v) cause the Company to incur unreimbursed tax liability under Section 1446(f) of the Code.

9.03 Transferees. Notwithstanding anything to the contrary contained in this Agreement, no transferee of all or any portion of any Interest shall be admitted as a Member unless

(a) such Interest is transferred in compliance with the applicable provisions of this Agreement, (b) such transferee shall have furnished evidence of satisfaction of the requirements of Section 9.02 reasonably satisfactory to the remaining Members, and (c) such transferee shall have executed and delivered to the Company such instruments as the remaining Members reasonably deem necessary or desirable to effectuate the admission of such transferee as a Member and to confirm the agreement of such transferee to be bound by all of the terms and provisions of this Agreement with respect to such Interest. At the request of the remaining Members, each such transferee shall also cause to be delivered to the Company, at the transferee's sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Company, to the effect that (i) such transferee has the legal right, power and capacity to own the Interest proposed to be transferred, (ii) if applicable, such Transfer does not violate any provision of any loan commitment or any mortgage, deed of trust or other security instrument encumbering all or any portion of the Company Property and (iii) such Transfer does not violate any federal or state securities laws and will not cause the Company to become subject to the Investment Company Act of 1940, as amended. As promptly as practicable after the admission of any Person as a Member, the books and records of the Company shall be changed to reflect such admission. All reasonable costs and expenses incurred by the company in connection with any Transfer of any Interest and, if applicable, the admission of any transferee as a Member shall be paid by such transferee.

9.04 Section 754 Election. In the event of a Transfer of all or part of the Interest of a Member, at the request of the transferee or if in the best interests of the Company (as determined by the Executive Committee), the Company shall elect pursuant to Section 754 of the Code to adjust the basis of Company Property as provided by Sections 734 and 743 of the Code, and any cost of such election or cost of administering or accounting for such election shall be at the sole cost and expense of the requesting transferee.

9.05 Right of First Offer

(a) Investor may, at any time after the Lockout Date, direct the sale of all or any portion of the Company Property by the Company, Owner or any Acquisition Vehicle; provided such sale shall be subject to the terms and conditions set forth in this Section 9.05.

(b) Any sale to which this Section 9.05 applies shall be initiated by Investor giving written notice (the "Initial Sale Notice") to Sponsor of the election to require the Company to sell such Company Property as outlined in Section 9.05(a) above.

(c) Upon receipt of the Initial Sale Notice, Sponsor shall have thirty (30) days to deliver to Investor a written notice of its desire to purchase such Company Property (a "Purchase Notice"), which Purchase Notice shall set forth the purchase price ("ROFO Offer Price") and basic terms ("Basic Terms"), on which Sponsor would be willing to purchase such Company Property and the amount that Investor would receive, assuming such offer price were distributed to the Members pursuant to pursuant to Section 6.02(a). If Sponsor has not provided a Purchase Notice at the end of such thirty (30) day period, Sponsor shall be deemed to have elected to not purchase the Company Property.

(d) Upon Investor's receipt of the Purchase Notice, Investor shall have thirty (30) days to elect to (i) sell the Company Property for the ROFO Offer Price, and otherwise on the Basic

Terms, or (ii) allow the Company Property to be sold in the open market in accordance with the terms of this Section 9.05. In the event that Investor does not deliver a response to the Purchase Notice within such thirty (30) day period, Investor shall be deemed to have elected to allow the Company Property to be sold in the open market in accordance with the terms of this Section 9.05.

(e) If Investor elects to sell the Company Property for the ROFO Offer Price as provided in Section 9.05(d) above, the Members, Company and/or Acquisition Vehicle, if any, shall have forty-five (45) days to enter into a binding purchase contract on the Basic Terms and such other terms consistent therewith, as may be acceptable to the Members. If no such agreement is entered into within such forty-five (45) day period, then Investor may proceed to cause the Company to sell the Company Property in the open market in accordance with the terms of this Section 9.05. Upon the execution of such binding purchase contract, the Sponsor shall make a deposit of five percent (5%) of the ROFO Offer Price with a nationally recognized escrow agent.

(f) Any purchase contract entered into pursuant to Section 9.05(e) above, shall provide for a closing thereunder not later than one hundred twenty (120) days after the execution of such purchase contract. Any failure by the Sponsor to close under such purchase contract in accordance with the terms thereof shall entitle Investor to retain the deposit as liquidated damages, and upon termination of the purchase contract Investor may proceed to sell the Company Property on the open market without any restrictions (including, without limitation, any restrictions imposed by Section 9.05(g) below). In the event of any such purchase by the Sponsor, Investor and/or its Affiliates as a condition to closing must be released from its liability under any third-party loans to the Company and any guarantees made in connection therewith.

(g) If (i) Sponsor does not elect to purchase the Company Property, or if Investor has elected to allow the Company Property to be sold in the open market, in each case, as provided above, or (ii) the Members have not entered into a binding purchase contract within the time period provided above, then Investor shall have the right to cause the Company, Owner or Acquisition Vehicle to list the Company Property for sale on an all-cash basis on such terms as may be approved by the Executive Committee, provided, that, (i) any such sale shall require the replacement of all outstanding bonds for the Project and the release of all guarantees executed in connection therewith as soon as reasonably practicable after closing of such sale, and an indemnity of the Owner and any party executing such guarantee until such replacement and release, and (ii) any such sale shall be consummated within one (1) year after delivery of the Initial Sale Notice at a price equal to or greater than the nine-five (95%) of the ROFO Offer Price (or for any price if Sponsor never delivered a Purchase Notice or otherwise never specified an ROFO Offer Price); provided, further, however, that, notwithstanding the Basic Terms, such sale may be evidenced by a purchase and sale agreement that contains terms that are different than the Basic Terms (by way of example only, but not limitation, with respect to representations and warranties, deposits and time periods for due diligence or closing), provided that such terms are reasonably determined by Investor to be market terms, and provided that the material economic monetary terms (including, without limitation, any seller financing, retained equity or other non-cash economic "terms", if any) of such transaction are, overall, no more favorable to the purchaser than the Basic Terms (provided, however, that the price can be as low as ninety-five percent (95%) of the ROFO Offer Price). If the purchase and sale agreement is not executed or if a

purchase and sale agreement is executed but does not close within the one (1) year period, then the Company will not enter into a definitive agreement for or close the sale of such portion of the Company Property without again complying with the terms of and conditions of this Section 9.05. The broker shall be a nationally or regionally recognized real estate broker, investment banker or similar sales professional with significant experience in marketing and selling projects such as the Company Property.

(h) Each of the Members shall cooperate in good faith in connection with the sale of the Company Property through the broker, with the objective of achieving the best possible price and terms available in the market from a sale to an unrelated third party.

ARTICLE X
EXCULPATION AND INDEMNIFICATION

10.01 Exculpation. No Member, member of the Executive Committee, partnership representative, general or limited partner of any Member, shareholder or member or other holder of an equity interest of any Member or manager, officer or director of any of the foregoing, shall be liable to the Company or to any other Member for monetary damages for any losses, claims, damages or liabilities arising from any act or omission performed or omitted by it and arising out of or in connection with this Agreement or the Company's business or affairs; provided, however, such act or omission was taken in good faith, was reasonably believed to be in the best interests of the Company and was within the scope of authority granted to such Person, and in the case of a Member or related Person, was not attributable to such Member's or Person's fraud, bad faith, willful misconduct or gross negligence. No general or limited partner of any Member, shareholder, member or other holder of an equity interest in such Member or manager, officer of director of any of the foregoing shall be personally liable for the performance of any such Member's obligations of this Agreement, but the foregoing shall not relieve any partner or member of any Member from its obligations to such Member.

10.02 Indemnification.

(a) The Company shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless each Member, each member of the Executive Committee, partnership representative, and each manager, member, general or limited partner of any Member or such Member's Affiliate, shareholder, member or other holder of any equity interest in such Member or its Affiliate, or any manager, officer or director of any of the foregoing (collectively, the "Indemnitees"), from and against any losses, claims, demands, liabilities, costs, damages, expenses and causes of action to which such Indemnitee may become subject in connection with any matter arising out of or incidental to any act performed or omitted to be performed by any such Indemnitee in connection with this Agreement or the Company's business or affairs; provided, however, that such act or omission was taken in good faith, was reasonably believed by the applicable Indemnitee to be within the scope of authority granted to such Member or applicable Indemnitee, and in the case of a Member or related Indemnitee, was not attributable to such Indemnitee's fraud, bad faith, willful misconduct or gross negligence. Any indemnity under this Section 10.02 shall be paid solely out of and to the extent of Company assets and shall not be a personal obligation of any Member and in no event will any Member be required, or permitted without the consent of all of

the Members, to contribute additional capital under Section 4.01 to enable the Company to satisfy any obligation under this Section 10.02. All judgments against the Company and the Members, or any one or more thereof, wherein such Member (or Members) is entitled to indemnification, must first be satisfied from Company assets before the Members shall be responsible therefor.

(b) The Company, any guarantors or indemnitors under any Guaranties, and the other Members shall be indemnified and held harmless by each Member from and against any and all claims, demands, liabilities, costs, damages, expenses and causes of action of any nature whatsoever arising out of or attributable to (i) any act performed by or on behalf of any such Member (including acts performed as the Managing Member) which is not reasonably believed by such Member to be within the scope of authority conferred upon such Member or its designated Executive Committee member under this Agreement, (ii) the fraud, bad faith, willful misconduct or gross negligence of such Member or its designated Executive Committee member, (iii) action by such Member that constitutes a breach of the recourse carve-out provisions of the loan documents to the extent such action by such Member causes the Company, an Acquisition Vehicle or a guarantor or indemnitor under any Guaranties to incur liability as a result of such Member's acts, (iv) the material breach by the Company of any of its representations and warranties made under any purchase, loan or other agreement entered into in connection with the acquisition of Company Property, which breach was the result of information or matters relating to or provided by or on behalf of such Member, or (v) any denial of an insurance claim by the Company based on an intentional misstatement or intentional withholding of information by any Member. With respect to an indemnity claim under Section 10.02(b)(ii), if the assets of the indemnifying Member insufficient to fund any such indemnity payments, such payments shall be funded by the Members on a pro rata basis in accordance with their respective Percentage Interests and amounts so provided by the Members shall constitute Additional Capital Contributions (and if a Member funds its share of such Additional Capital Contributions, but the other fails to do so within ten (10) Business Days after a written request to do so, the funding Member shall have all the rights and remedies of a Contributing Member under Section 4.01(d)).

(c) The Company shall, to the fullest extent permitted by applicable law, indemnify, defend and hold harmless Investor, Sponsor and their respective direct and indirect partners, shareholders, officers, managers, directors, members, advisors, agents and Affiliates (including Guarantor), from and against any payment with respect to all Indemnifiable Guaranty Expenses related thereto. Any indemnity under this Section 10.02(c) shall be paid out of the assets of the Company, and if such assets are insufficient to fund any such indemnity payments, such payments shall be funded by the Members on a pro rata basis in accordance with their respective Percentage Interests (with any Indemnifiable Guaranty Expenses paid by a Member or persons affiliated with it being credited to such Member) and amounts so provided by the Members shall constitute Additional Capital Contributions (and if a Member funds its share of such Additional Capital Contributions, but the other fails to do so within ten (10) Business Days after a written request to do so, the funding Member shall have all the rights and remedies of a Contributing Member under Section 4.01(d), in addition to any and all other remedies available at law or in equity); provided, however, that:

(i) if any demand for payment with respect to any Guaranty results solely from the affirmative act or omission of Investor, or its Affiliates, or any of the respective partners, shareholders, officers, managers, directors, members, agents or Affiliates of any of the

foregoing, and such act or omission was made without the consent or approval of Sponsor, any of its Affiliates or any other Person seeking indemnification under this Section 10.02(c) with respect thereto, (A) Investor hereby agrees to pay any amounts so demanded, (B) any such payments shall not constitute Additional Capital Contributions of Investor and (C) Investor hereby agrees to indemnify, defend and hold harmless Sponsor and its partners, shareholders, officers, managers, directors, members, agents and Affiliates, from and against all Indemnifiable Guaranty Expenses related thereto; and

(ii) if any demand for payment with respect to any Guaranty results solely from the affirmative act or omission of Sponsor, any of its Affiliates, or any of the partners, shareholders, officers, managers, directors, members, agents or Affiliates of any of the foregoing, and such act or omission was made without the consent or approval of Investor, (A) Sponsor agrees to pay any amounts so demanded, and none of Sponsor or its partners, shareholders, officers, managers, directors, members, agents and Affiliates shall be entitled to any indemnification from the Company or Investor with respect thereto, (B) any such payments shall not constitute Additional Capital Contributions of Sponsor and (C) Sponsor hereby agrees to indemnify, defend and hold harmless Investor and its partners, shareholders, officers, managers, directors, members, advisors, agents and Affiliates, from and against all Indemnifiable Guaranty Expenses related thereto.

(d) The provisions of this Section 10.02 shall survive for a period of four years from the date of dissolution of the Company, provided that, if at the end of such period there are any actions, proceedings or investigations then pending, any Indemnitee may so notify the Company and the other Members at such time (which notice shall include a brief description of each such action, proceeding or investigation and the liabilities asserted therein) and the provisions of this Section 10.02 shall survive with respect to each such action, proceeding or investigation set forth in such notice (or any related action, proceeding or investigation based upon the same or similar claim) until such date that such action, proceeding or investigation is finally resolved.

(e) Notwithstanding anything to the contrary contained in this Agreement, the obligations of the Company or any Member under this Section 10.02 shall (i) be in addition to any liability which the Company or such Member may otherwise have and (ii) inure to the benefit of such Indemnitee, its Affiliates and their respective members, managers, directors, officers, employees, agents and Affiliates and any successors, assigns, heirs and personal representatives of such Persons.

ARTICLE XI
DISSOLUTION AND TERMINATION

11.01 Dissolution. The Company shall be dissolved and its business wound up upon the earliest to occur of any of the following events, unless the majority-in-interest of the remaining Members vote to continue the life of the Company upon the occurrence of such an event:

(a) The sale, condemnation or other disposition of all or substantially all of the Company Property and the receipt of all consideration therefor;

(b) The written determination of the Executive Committee to terminate the Company; or

(c) The death, retirement, resignation, expulsion, bankruptcy or dissolution of any Member or occurrence of any event that terminates the continued membership of any Member shall not cause the Company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the Company shall be continued without dissolution.

Without limitation on, but subject to, the other provisions hereof, the assignment of all or any part of a Member's Interest permitted hereunder will not result in the dissolution of the Company. Except as otherwise specifically provided in this Agreement, each Member agrees that, without the consent of the other Member, any Member may not withdraw from or cause a voluntary dissolution of the Company. In the event any Member withdraws from or causes a voluntary dissolution of the Company in contravention of this Agreement, such withdrawal or the causing of a voluntary dissolution shall not affect such Member's liability for obligations of the Company.

11.02 Termination. In all cases of dissolution of the Company, the business of the Company shall be wound up and the Company terminated as promptly as practicable thereafter, and each of the following shall be accomplished:

(a) The Liquidating Member shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.

(b) The Company Property shall be liquidated by the Liquidating Member as promptly as possible, but in an orderly and businesslike and commercially reasonable manner and subject to the provisions of the Operating Plan then in effect or a liquidating plan approved by the Executive Committee. The Liquidating Member may distribute Company Property in kind only with the consent of all of the Members.

(c) The proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:

(i) To the payment of (A) the debts and liabilities of the Company (including any Member Loans or outstanding amounts due on any indebtedness encumbering the Company Property, or any part thereof) and (B) the expenses of liquidation.

(ii) To the setting up of any reserves which the Liquidating Member and the Executive Committee shall determine to be reasonably necessary for contingent, unliquidated or unforeseen liabilities or obligations of the Company or any Member arising out of or in connection with the Company. Such reserves may, in the discretion of the Liquidating Member, be paid over to a national bank or national title company selected by it and authorized to conduct business as an escrow agent to be held by such bank or title company as escrow agent for the purposes of disbursing such reserves to satisfy the liabilities and obligations described above, and at the expiration of such period as the Liquidating Member may reasonably deem advisable, distributing any remaining balance as provided in Section 11.02(c)(iii); provided, however, that, to the extent that it shall have been necessary, by reason of applicable law or regulation, to create any reserves prior to any and all distributions which would otherwise have been made under

Section 11.02(c)(i) and, by reason thereof, a distribution under Section 11.02(c)(i) has not been made, then any balance remaining shall first be distributed pursuant to Section 11.02(c)(i).

(iii) The balance, if any, to the Members in accordance with Section 6.02.

11.03 Liquidating Member. The Liquidating Member is hereby irrevocably appointed as the true and lawful attorney in the name, place and stead of each of the Members, such appointment being coupled with an interest, to make, execute, sign, acknowledge and file with respect to the Company all papers which shall be necessary or desirable to effect the dissolution and termination of the company in accordance with the provisions of this Article XI. Notwithstanding the foregoing, each Member, upon the request of the Liquidating Member or the Executive Committee, shall promptly execute, acknowledge and deliver all such documents, certificates and other instruments as the Liquidating Member or the Executive Committee shall reasonably request to effectuate the proper dissolution and termination of the Company, including the winding up of the business of the Company.

11.04 Claims of the Members. Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or any other Member.

ARTICLE XII
MISCELLANEOUS

12.01 Representations and Warranties of the Members.

(a) Each Member represents and warrants to the other Members as follows:

(i) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to conduct the business of the Company.

(ii) This Agreement constitutes the legal, valid and binding obligation of the Member enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws and public policy affecting the rights of creditors generally and the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or equity)..

(iii) No consents or approvals are required from any governmental authority or other person or entity for the Member to enter into this Agreement and the Company. All limited liability company, corporate or partnership action on the part of the Member necessary for the authorization, execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly taken.

(iv) The execution and delivery of this Agreement by the Member, and the consummation of the transactions contemplated hereby, does not conflict with or

contravene the provisions of its organizational documents or any agreement or instrument by which it or its properties are bound or any law, rule, regulation, order or decree to which it or its properties are subject.

(v) The Member has not retained any broker, finder or other commission or fee agent, and no such person has acted on its behalf in connection with the acquisition of the Real Property or the execution and delivery of this Agreement.

(vi) It understands that (A) an investment in the Company involves substantial and a high degree of risk, (B) no federal or state agency has passed on the offer and sale of the Interest in the Company to such Person, (C) it must bear the economic risk of such Person's investment in the Company for an indefinite period of time, since such Person's Interest in the Company has not been registered for sale under the Securities Act of 1933 and, therefore, cannot be sold or otherwise transferred unless subsequently registered under the Securities Act of 1933 or an exemption from such registration is available, and the Interest in the Company of such Person cannot be sold or otherwise transferred unless registered under applicable state securities or blue sky laws or an exemption from such registration is available, (D) there is no established market for the Interest of such Person in the Company and no public market will develop and (E) such Person's principals have such knowledge and experience in real estate and, other financial and business matters that they are capable of evaluating the merits and risks of an investment in the Company.

(vii) Sponsor and its Affiliates provided Investor with true, correct and complete copies of all material due diligence materials in the Sponsor's possession or control regarding the Project, and Investor acknowledges receipt and approval of all such items.

(b) Each Member agrees to indemnify and hold harmless the Company and each other Member and their officers, directors, shareholders, partners, members, employees, successors and assigns from and against any and all loss, damage, liability or expense (including costs and attorneys' fees) which they may incur by reason of, or in connection with, any breach of the foregoing representations and warranties by such Member and all such representations and warranties shall survive the execution and delivery of this Agreement and the termination and dissolution of Sponsor and/or the Company or any other Member.

12.02 Further Assurances. Each Member agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the intent and purposes of this Agreement.

12.03 Notices. All notices, demands, consents, approvals, requests or other communications which any of the parties to this Agreement may desire or be required to give hereunder (collectively, "Notices") shall be in writing and shall be given by (a) personal delivery (b) E-mail or (c) a reputable overnight courier service, fees prepaid, addressed as follows:

If to Investor to: ESK Midway Rising Investor, LLC
211 N. Stadium Blvd., Suite 201

	Columbia, MO 65203 Attn: Legal Department
and a copy to:	Husch Blackwell LLP 8001 Forsyth Boulevard, Suite 1500 St. Louis, MO 63105 Attn: Andrew Crossett, Esq. Email: andrew.crossett@huschblackwell.com
If to Sponsor to:	Midway Rising GP, LLC c/o Zephyr Midway Rising, LLC 700 Second Street Encinitas, CA 92024 Attn: Brad Termini Email: brad@zephyrpartners.com arichter@zephyrpartners.com
and a copy to:	Midway Rising GP, LLC Legends Venue Management, LLC 61 Broadway, Suite 2400 New York, NY 10006 Attn: General Counsel E-Mail: jruzich@legends.net
and a copy to:	Orrick, Herrington & Sutcliffe LLP 355 South Grand Ave #2700 Los Angeles, CA 90071 Attn: Randolph Perry, Esq. Email: rperry@orrick.com

Any Member may designate another addressee (and/or change its address) for Notices hereunder by a Notice given pursuant to this Section 12.03. A Notice sent in compliance with the provisions of this Section 12.03 shall be deemed given on the date of receipt.

12.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed wholly within that State.

12.05 Attorney Fees. If the Company or any Member obtains a judgment against any Member by reason of the breach of this Agreement or the failure to comply with the terms hereof, reasonable attorneys' fees and costs as fixed by the court shall be included in such judgment.

12.06 Captions. All titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision in this Agreement.

12.07 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter, singular and plural, as the identity of the party or parties may require.

12.08 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective executors, administrators, legal representatives, heirs, successors and assigns, and shall inure to the benefit of the parties hereto and, except as otherwise provided herein, their respective executors, administrators, legal representatives, heirs, successors and assigns.

12.09 Extension Not a Waiver. No delay or omission in the exercise of any power, remedy or right herein provided or otherwise available to a Member or the Company shall impair or affect the right of such Member or the Company thereafter to exercise the same. Any extension of time or other indulgence granted to a member hereunder shall not otherwise alter or affect any power, remedy or right of any other Member or of the Company, or the obligations of the Member to whom such extension or indulgence is granted.

12.10 Creditors Not Benefited. Nothing contained in this Agreement is intended or shall be deemed to benefit any creditor of the Company or any Member, and no creditor of the Company shall be entitled to require the Company or the Members to solicit or accept any Additional Capital Contribution for the Company or to enforce any right which the Company or any Member may have against any Member under this Agreement or otherwise or under any guaranty.

12.11 Recalculation of Interest. If any applicable law is ever judicially interpreted so as to deem any distribution, contribution, payment or other amount received by any Member or the Company under this Agreement as interest and so as to render any such amount in excess of the maximum rate or amount of interest permitted by applicable law, then it is the express intent of the Members and the Company that all amounts in excess of the highest lawful rate or amount theretofore collected be credited against any other distributions, contributions, payments or other amounts to be paid by the recipient of the excess amount or refunded to the appropriate Person, and the provisions of this Agreement immediately be deemed reformed, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the payment of the fullest amount otherwise required hereunder. All sums paid or agreed to be paid that are judicially determined to be interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the term of such obligation so that the rate or amount of interest on account of such obligation does not exceed the maximum rate or amount of interest permitted under applicable law.

12.12 Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and other application thereof shall not in any way be affected or impaired thereby.

12.13 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. Amendments, variations, modifications or changes herein may be made effective and binding upon the Members by, and only by, the setting forth of same in a document duly executed by each Member, and any alleged amendment, variation, modification or change herein which is not so documented shall not be effective as to any Member.

12.14 Publicity. The parties agree that no Member shall issue any press release or otherwise publicize or disclose the terms of this Agreement or the proposed terms of any acquisition, financing, leasing, management or disposition of the Company Property or the Real Property, without the consent of each of the other Members, except as such disclosure may be made in the course of normal reporting practices by any Member to its members, shareholders or partners or as otherwise required by law.

12.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same agreement. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

12.16 Confidentiality.

(a) The terms of this Agreement, the name of the family, its members, or its affiliates associated with Investor, the identity of any person with whom the Company may be holding discussions with respect to any investment, acquisition, disposition or other transaction, and all other business, financial or other information relating directly to the conduct of the business and affairs of the Company or the relative or absolute rights or interests of any of the Members (collectively, the "Confidential Information") that is not already publicly available or that has not been publicly disclosed pursuant to authorization by all of the Members is confidential and proprietary information of the Company, the disclosure of which would cause irreparable harm to the Company and the Members. Accordingly, each Member represents that it has not and agrees that it will not and will direct its shareholders, partners, directors, officers, agents, advisors and Affiliates not to, disclose to any Person any Confidential Information or confirm any statement made by third Persons regarding Confidential Information until the Company has publicly disclosed the Confidential Information pursuant to authorization by the Executive Committee and has notified each Member that it has done so; provided, however, that any Member (or its Affiliates) may disclose such Confidential Information if required by law (it being specifically understood and agreed that anything set forth in a registration statement or any other document filed pursuant to law will be deemed required by law), if necessary for it to perform any of its duties or obligations hereunder or in any development management or property or asset management agreement to which it is a party covering any Company Property, and to its attorneys and advisors who agree to maintain a similar confidence.

(b) Subject to the provisions of Section 12.16(a), each Member agrees not to disclose any Confidential Information to any Person (other than a Person (including without limitation an attorney or advisor) agreeing to maintain all Confidential Information in strict confidence or a

judge, magistrate or referee in any action, suit or proceeding relating to or arising out of this Agreement or otherwise), and to keep confidential all documents (including without limitation, responses to discovery requests) containing any Confidential Information. Each Member hereby consents in advance to any motion for any protective order brought by any other Member represented as being intended by the movant to implement the purposes of this Section 12.16, provided that, if a Member receives a request to disclose any Confidential Information under the terms of a valid and effective order issued by a court or governmental agency and the order was not sought by or on behalf of or consented to by such Member, then such Member may disclose the Confidential Information to the extent required if the Member as promptly as practicable (i) notifies each of the other Members of the existence, terms and circumstances of the order, (ii) consults in good faith with each of the other Members on the advisability of taking legally available steps to resist or to narrow the order, and (iii) if disclosure of the Confidential Information is required, exercises its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the portion of the disclosed Confidential Information that any other Member designates. The cost (including without limitation, attorneys' fees and expenses) of obtaining a protective order covering Confidential Information designated by such other Member will be borne by the Company.

(c) The covenants contained in this Section 12.16 will survive the Transfer of the Interest of any Member and the termination of the Company.

12.17 Venue. Except as set forth in Section 12.19 below, each party hereto agrees that any claim, action or relief by any party against any other party based on or arising out of this Agreement shall be brought only in a United States District Court for the Southern District of California or Superior Court in San Diego County.

12.18 Waiver of Jury Trial. EACH OF THE MEMBERS HEREBY WAIVES TRIAL BY JURY IN ANY ACTION ARISING OUT OF MATTERS RELATED TO THIS AGREEMENT, WHICH WAIVER IS INFORMED AND VOLUNTARY.

12.19 Arbitration. Except for actions for injunctive or other equitable relief, any dispute whatsoever relating to the interpretation, validity or performance of this Agreement, or any dispute arising out of this Agreement or related in any way to the governance, operation or business of the Company, which is not resolved within the thirty (30) day period commencing upon receipt of written notice by either party from the other party, shall be settled by binding and final arbitration before a single arbitrator. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA Rules"). Arbitration shall be by a single arbitrator experienced in the matters at issue selected in accordance with the AAA Rules. The arbitration shall be held in such place in the metropolitan area of San Diego, California as may be specified by the arbitrator (or such other place upon which the parties and the arbitrator may agree), and shall be conducted in accordance with the AAA Rules (regardless of any choice of law provision in the Agreement) to the extent not inconsistent with this Agreement. The decision of the arbitrator shall be final and binding as to any matters submitted to arbitration and shall be in lieu of any other action or proceeding of any nature whatsoever; and, if necessary, any judgment upon the arbitrator's decision may be entered in any court of record having jurisdiction over the subject matter or over the party against whom the judgment is being enforced. The reasonable attorneys' fees and costs of the prevailing party (as determined by the arbitrator) shall

be reimbursed by the other party. Except as required by law, the parties agree to keep confidential the existence and details of any dispute subject to this provision, including the results of arbitration. The foregoing shall not be deemed to prohibit a party from disclosing relevant information to its legal, financial and other advisors in connection with any such dispute as long as such advisors agree to maintain the confidentiality thereof in accordance with this provision. Notwithstanding the foregoing, any party may seek temporary injunctive relief through any local, state, or federal court with proper jurisdiction over the dispute in the event of any breach or anticipatory or threatened breach of this Agreement.

12.20 Representation. It is acknowledged that (A) Husch Blackwell LLP ("Investor Counsel") is counsel for Investor and certain Affiliates of Investor (but not any other Member), and (B) Orrick, Herrington & Sutcliffe LLP ("Orrick") is counsel for Sponsor and Affiliates of Sponsor (but not any other Member). Investor Counsel is hereby approved as legal counsel for the Company and each Acquisition Vehicle for all matters, subject in each case to Investor's right to withdraw such approval, and the Members (on their own behalf and on behalf of the Company and each Acquisition Vehicle) hereby for all matters and the Members waive any conflict of interest associated with, as applicable, Investor Counsel's such representation of Investor and their Affiliates, or Orrick's representation of Sponsor, and Affiliates of Sponsor, on the one hand, and any representation of the Company or any Acquisition Vehicle by Investor Counsel or Orrick, on the other hand; provided, however, that each of the Members (on their own behalf and on behalf of the Company and each Acquisition Vehicle) agree that in any dispute between two or more of the Company (or any Acquisition Vehicle), Sponsor and Investor, neither the Company (nor any Acquisition Vehicle) nor any Member may seek to disqualify Orrick from representing Sponsor or its Affiliates due to any representation of the Company or Acquisition Vehicle by Orrick, and no Member may seek to disqualify Investor Counsel from representing Investor or their respective Affiliates due to any representation of the Company or any Acquisition Vehicle by Investor Counsel.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

"**SPONSOR**"

MIDWAY RISING GP, LLC,
a Delaware limited liability company

By: Zephyr Midway Rising, LLC,
a Delaware limited liability company
its Member

By: _____
Name: Brad Termini
Title: Authorized Signatory

By: Legends Venue Management, LLC
a Delaware limited liability company
its Member

By: _____
Name: Shervin Mirhashemi
Title: Authorized Signatory

[Additional Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the introductory paragraph hereof.

"**SPONSOR**"

MIDWAY RISING GP, LLC,
a Delaware limited liability company

By: Zephyr Midway Rising, LLC,
a Delaware limited liability company
its Member

By: _____
Name: Brad Termini
Title: Authorized Signatory

By: Legends Venue Management, LLC
a Delaware limited liability company
its Member

By: _____
Name: Shervin Mirhashemi
Title: Authorized Signatory

[Additional Signatures on Following Page]

"**INVESTOR**"

ESK MIDWAY RISING INVESTOR, LLC,
a Missouri limited liability company

By: DocuSigned by: R. Otto Maly
464F0FBFD9A2426...
Name: R. Otto Maly
Title: Manager

[End of Signatures]

EXHIBIT A

ALLOCATION OF NET PROFITS AND NET LOSSES

1. Certain Definitions.

When used in this **Exhibit A**, the following terms shall have the meanings set forth below:

"**Book Value**" means, as of any particular date, the value at which any asset of the Company is properly reflected on the books of the Company as of such date in accordance with the provisions of Section 1.704-1(b) of the Treasury Regulations. The Book Value of all Company assets may, in the reasonable discretion of the Managing Member, be adjusted to equal their respective gross fair market values, as determined by the Executive Committee, as of the following times: (i) the acquisition of an additional Interest by any new or existing Member in exchange for more than a de minimis capital contribution or in exchange for services and (ii) the distribution by the Company to a Member of more than a de minimis amount of money or Company property other than money as consideration for an Interest.

"**Company Minimum Gain**" shall have the meaning ascribed to the term "partnership minimum gain" in the Treasury Regulations Section 1.704-2(d).

"**Member Nonrecourse Debt**" shall have the meaning ascribed to the term "partner nonrecourse debt" in Treasury Regulations Section 1.704-2(b)(4).

"**Net Profits**" **and** "**Net Losses**" shall mean for each taxable year, the Company's taxable income or taxable loss for such taxable year, as determined under Section 703(a) of the Code and Treasury Regulations Section 1.703-1 (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or taxable loss), but with the following adjustments:

(a) Any tax-exempt income, as described in Section 705(a)(1)(B) of the Code, realized by the Company during such taxable year shall be taken into account in computing such taxable income or taxable loss as if it were taxable income;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code for such taxable year, including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) as items described in Section 705(a)(2)(B) of the Code, shall be taken into account in computing such taxable income or taxable loss as if they were deductible items;

(c) Any item of income, gain, loss or deduction that is required to be allocated specially to the Members under Section 3 of this **Exhibit A** shall not be taken into account in computing such taxable income or taxable loss;

(d) In lieu of any depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the Company shall compute such deductions based on the Book Value of Company property, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3);

(e) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of (as adjusted for "book" depreciation computed in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3)), notwithstanding that the adjusted tax basis of such property differs from its Book Value; and

(f) If the Book Value of Company assets is adjusted to equal fair market value as provided in the definition of Book Value, then Net Profits or Net Losses shall include the amount of any increase or decrease in such Book Values attributable to such adjustment.

"**Nonrecourse Liability**" shall have the meaning set forth in Treasury Regulations Section 1.752-1(a)(2).

All other initially capitalized terms shall have the meanings ascribed to them in the Agreement.

2. Allocations of Net Profits and Net Losses.

After adjusting each member's Capital Account for all Capital Contributions and all distributions during the Fiscal Year, and for all special allocations under Section 3 of this **Exhibit A** for such Fiscal Year, the Managing Member (or its designee) shall allocate all Net Profits and Net Losses of the Company to the Members so as to, as nearly as possible, increase or decrease, as the case may be, each Member's Capital Account to the extent necessary such that each Member's Capital Account is equal to the amount that such Member would receive if the Company were dissolved, its assets were sold for their Book Value, its liabilities were satisfied in accordance with their terms (limited with respect to each nonrecourse liability to the Book Value of the assets securing such liability) and all remaining amounts were distributed to the Members in accordance with Section 6.02 of the Agreement, minus such Member's share of "partnership minimum gain" and "partner nonrecourse debt minimum gain," as those terms are defined in the Treasury Regulations, computed immediately prior to the hypothetical sale of assets, and also minus any amounts that the Member is obligated to contribute to the Company.

3. Special Allocations.

Notwithstanding Section 2 of this **Exhibit A** above:

(a) *Minimum Gain Chargeback*. If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in

subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 3(a) of this **Exhibit A** shall be made in proportion to the amounts required to be allocated to each Member under this Section 3(a) of this **Exhibit A**. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section 3(a) of this **Exhibit A** is intended to comply with the minimum gain chargeback requirement contained in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) *Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt*. If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 3(b) of this **Exhibit A** shall be made in proportion to the amounts required to be allocated to each Member under this Section 3(b) of this **Exhibit A**. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 3(b) of this **Exhibit A** is intended to comply with the minimum gain chargeback requirement contained in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) *Nonrecourse Deductions*. Any nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(d) *Member Nonrecourse Deductions*. Those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(e) *Qualified Income Offset*. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit

balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 3(e) of this **Exhibit A** shall be taken into account in computing subsequent allocations of income and gain pursuant to this **Exhibit A** so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Section 3(e) of this **Exhibit A** to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this **Exhibit A** if such unexpected adjustments, allocations, or distributions had not occurred.

(f) *Gross Income Allocation*. If any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of the amounts such Member is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 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 subsection (f) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this **Exhibit A** have been made as if subsection (e) and this subsection (f) were not in this **Exhibit A**.

(g) *Section 754 Adjustments*. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b), is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, the amount of such adjustment to 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 Members in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(m).

4. Tax Allocations.

For income tax purposes only, each item of income, gain, loss, and deduction of the Company shall be allocated among the Members 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, notwithstanding any other provision in this **Exhibit A**, in accordance with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company, or any property as to which the Book Value has been adjusted in accordance with the definition of Book Value in Section 1 of this **Exhibit A**, shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value. Such allocations shall be made by utilizing any permissible method under Treasury Regulation Section 1.704-3 reasonably determined by

the Managing Member with the approval of Investor. Allocations pursuant to this Section 4 of this **Exhibit A** are solely for purposes of federal, state and local income taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of Net Profits, Net Losses, or distributions pursuant to any provision of this Agreement.

5. Other Allocation Provisions.

(a) For purposes of determining the Net Profits, Net Losses or any other items attributable to a portion of any Fiscal Year, Net Profits, Net Losses, and any such other items shall be determined by the Managing Member (or its designee) following consultation with the Company Accountant using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such regulations. With the approval of the Executive Committee, Sections 1 to 4 of this **Exhibit A** may be amended at any time by the Managing Member if necessary, in the opinion of tax counsel to the Company, to comply with the Treasury Regulations, so long as any such amendment does not materially change the relative economic interests of the Members.

6. The Members are aware of the income tax consequences of the allocations made by this **Exhibit A** and hereby agree to be bound by the provisions of this **Exhibit A** in reporting their shares of Company taxable income and loss for federal, state and local income tax purposes.

SCHEDULE A

Resolutions Regarding Appointment of Officers

RECITAL

WHEREAS, the Members desire to appoint officers of the Company to exercise the power and authority with respect to the business and affairs of the Company as described below.

OFFICERS

RESOLVED, that the Company may have, at the discretion of the Executive Committee, a Chief Executive Officer or President, one or more Executive Vice Presidents, a Secretary, a Treasurer, one or more Vice Presidents, one or more Assistant Vice Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers and/or such other officers as may be appointed by the Executive Committee. One person may hold two or more offices. The officers of the Company shall serve at the discretion of the Executive Committee. No officer shall be deemed a "manager" of the Company, as that term is defined in Section 18-101 (10) of the Delaware Limited Liability Company Act, by reason of his or her appointment or by reason of his or her actions as an officer of the Company. Any officer may resign at any time by giving written notice to the Executive Committee. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

DUTIES

RESOLVED, that subject to Section 7.01(a) and 7.01(d) of the Agreement, the officers of the Company shall have the powers and duties described below:

CHIEF EXECUTIVE OFFICER or PRESIDENT. The Chief Executive Officer or President of the Company, if any, shall have, subject to the supervision, direction and control of the Executive Committee, general supervision, direction and control of the business and affairs of the Company. He/she shall have the general powers and duties of management usually vested in the chief executive officer or president of a company organized for profit under the General Corporation Law of the State of Delaware, and shall have such other powers and duties with respect to the administration of the business and affairs of the Company as may from time to time be assigned to him/her by the Executive Committee, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the Company and the authority to enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Executive Committee to some other officer or agent of the Company.

EXECUTIVE VICE PRESIDENT. The Executive Vice President, if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Company as from time to time may be assigned to each of them by the Chief Executive Officer or President or the Executive Committee. Subject to the control and the direction of the Executive Committee or the Chief Executive Officer or President, each Executive Vice President may enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Executive Committee to some other officer or agent of the Company. In the absence or disability of the Chief Executive Officer or President, the Executive Vice Presidents, in order of their rank as fixed by the Executive Committee, or if not ranked, the Executive Vice President shall perform all of the duties of the Chief Executive Officer or President and when so acting shall have all of the powers of and be subject to all the restrictions upon the Chief Executive Officer or President.

VICE PRESIDENT. The Vice President, if any, shall exercise and perform such powers and duties with respect to the administration of the business and affairs of the Company as from time to time may be assigned to each of them by the Chief Executive Officer or President or the Executive Committee. Subject to the control and the direction of the Executive Committee or the Chief Executive Officer or President, each Vice President may enter into any contract and execute and deliver any instrument in the name and on behalf of the Company except where required by applicable law to be otherwise signed and executed and except where signing and execution thereof shall be expressly delegated by the Executive Committee to some other officer or agent of the Company.

SECRETARY. The Secretary and/or any Assistant Secretary may keep and maintain, or cause to be kept and maintained, the records of the Company at the principal office for the transaction of the business of the Company, or such other place as the Executive Committee may order. If requested by the Executive Committee, he/she shall exercise and perform such other powers and duties with respect to the administration of the business and affairs of the Company as generally are incident to the position of a secretary of a company organized for profit under the General Corporation Law of the State of Delaware or as from time to time may be assigned to him or her by the Chief Executive Officer or President or the Executive Committee.

TREASURER. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and membership interests. The books of account at any reasonable time shall be open to inspection by any Members of the Company and the Executive Committee. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Company with such depositories as may be designated by the Executive Committee, the Chief Executive Officer or President or such officers as may be designated by the Executive Committee. He/she shall disburse the funds of the Company as may be ordered by the Executive Committee, shall render to the Chief Executive Officer or President and the Executive Committee, whenever they request it, an account of all of his/her transactions as Treasurer and of the financial condition of the Company. The

Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer of a company organized for profit under the General Corporation law of the State of Delaware or as may from time to time be assigned to him or her by the Executive Committee or the Chief Executive Officer or President.

ASSISTANT SECRETARY. The Assistant Secretary, if any, or, if there be more than one, the Assistant Secretaries, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary. The Assistant Secretary shall have all such further powers and duties as generally are incident to the position of an assistant secretary of a company organized for profit under the General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Executive Committee or the Chief Executive Officer or President.

ASSISTANT TREASURER. The Assistant Treasurer, if any, or, if there shall be more than one, the Assistant Treasurers, in the order determined by the Executive Committee, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer. The Assistant Treasurer shall have all such further powers and duties as generally are incident to the position of an assistant treasurer of a company organized for profit under the General Corporation Law of the State of Delaware or as may from time to time be assigned to him or her by the Executive Committee or the Chief Executive Officer or President.

COMPENSATION. The officers of the Company shall not be paid any compensation by the Company for serving as officers.

APPOINTMENT OF OFFICERS

RESOLVED, that the individuals listed below be, and they hereby are, elected to the offices set forth opposite their respective names, to serve in such capacities until the earlier of their resignation or removal, or until their successors are elected and qualified by the Executive Committee:

NAME	OFFICE
Brad Termini	Chief Executive Officer
Austin Richter	Vice President and Secretary
Seth Levin	Vice President and Treasurer
Shervin Mirhashemi	Vice President
Bill Rhoda	Vice President

RESOLVED FURTHER, that each of the authorizations resulting from the preceding resolution shall cease automatically upon such individual's termination of employment with the Company or any affiliate of the Company.