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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2023-001599

Full Moon Investments, LLC; Stellar Naomi, a series of Yield
Capital, LLC; and John David Engel, ... Respondents,

v.

Campbell Teague, LLC; George A. Campbell, Jr.; Elizabeth
Teague; Emily O'Brian; Molly Cash; and Beau Brogdon, ... Appellants.

**RECORD ON APPEAL
VOLUME II
(PAGES 436-623)**

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ⁱ Transcript of Hearing on Motion to Compel Arbitration dated August 21, 2023 (*if the recording is found by the Court Reporter*)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CIVIL ACTION NO: 2023-CP-23-01567
Full Moon Investments, LLC,	)	
Stellar Naomi, a series of Yield Capital, LLC,	)	
and John David Engel,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' SUPPLEMENTAL
	)	MEMORANDUM IN OPPOSITION TO
	)	DEFENDANTS' MOTION TO COMPEL
	)	ARBITRATION
Campbell Teague, LLC,	)	
George A. Campbell, Jr., Esquire, individually,	)	
Elizabeth Teague, Esquire, individually,	)	
Emily O'Brian, Esquire, individually,	)	
Molly Cash, Esquire, individually, and,	)	
Beau Brogdon, Esquire, individually,	)	
	)	
Defendants.	)	
	)	

TO: THE DEFENDANTS ABOVE NAMED BY AND THROUGH THEIR ATTORNEYS OF RECORD:

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION¹

PROCEDURAL HISTORY

On March 30, 2023, Plaintiffs filed a legal malpractice complaint. On April 18, 2023, Defendants filed a motion to compel this legal malpractice matter into arbitration despite the fact that absence of an agreement between the client and lawyer that required an arbitration of disputes.²

Attached to Defendants' April 18, 2023, Motion to Compel Arbitration and Stay is **Exhibit A-1** which is the July 20, 2020, Limited Liability Company Agreement of Yield Capital, LLC ("First LLC Agreement"). This is the document the Defendants' erroneously rely upon in their

¹ Plaintiffs hereby adopted and incorporate by reference as if written herein verbatim all of the arguments made in their original memorandum in opposition filed with this Court on June 8, 2023.

² Assuming that even such a provision is enforceable in South Carolina.

efforts to compel arbitration. In addition to the arguments already advanced by Plaintiffs in opposition to Defendants' motion to compel arbitration, Plaintiffs' hereby add the following ground: **the First LLC Agreement is not operable**. In other words, Defendants are relying on the wrong operating agreement.

On October 23, 2022, the First LLC Agreement was amended and replaced by the Second Amended and Restated Limited Liability Company Agreement ("Second LLC Agreement") which is attached hereto as **Exhibit A** and incorporated by reference.³ *The Second LLC Agreement was the effective operating agreement for Yield Capital, LLC when the Defendants filed their motion to compel arbitration.*

On June 1, 2023, the Second LLC Agreement was replaced by the Third Amended and Restated Limited Liability Company Agreement ("Third LLC Agreement") which is attached hereto as **Exhibit B** and incorporated by reference. The Third LLC Agreement is in full force and effect currently.

RELEVANT BACKGROUND

All three operating agreements referenced above are governed by the laws of the State of Delaware.⁴ Delaware Code of Laws §18-302(e) states in part as follows: "[I]f a limited liability company agreement *provides for the manner in which it may be amended*, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, *it may be amended only in that manner* or as otherwise permitted by law ..." (Emphasis supplied by Plaintiffs).

³ Plaintiffs continue to reject that any version of Yield Capital, LLC's operating agreements have any relevance for the Court's consideration, as they do **NOT** apply to the attorney-client relationship which is the gravamen of this legal malpractice action. Still, in the interest of completeness in refuting the Defendants' preposterous motion to compel arbitration, Plaintiffs are forced to indulge in their misplaced argument, but do so with reference to the correct governing document.

⁴ Please see Defendants' **Exhibit A-1** at Section 12.11 on page 22, **Exhibit A** at Section 12.11 on page 25, and **Exhibit B** at Section 12.11 on page 25.

Per the First LLC Agreement, Section 12.4, page 21, the Agreement “may be amended only in writing by the Manager.” Thus, per §18-302(e), the Manager had authority to amend the First LLC Agreement in writing, and that is exactly what occurred on October 23, 2022. The First LLC Agreement was replaced by the Second LLC Agreement by the Manager in writing.⁵

This change is critical because **the arbitration language was significantly altered** between the first two agreements.⁶ The arbitration language in the Second LLC Agreement in Section 12.6 on pages 24 and 25 of **Exhibit A** reads as follows:

12.6 Arbitration. ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY’S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A MEMBER’S RIGHTS TO INITIATE OR PURSUE ARBITRATION UNDER THIS AGREEMENT SHALL IMMEDIATELY TERMINATE UPON THE REMOVAL OF SUCH MEMBER FOR ANY REASON AS PROVIDED FOR UNDER SECTION 5.1. **ONLY THOSE MEMBERS WHO HAVE PAID THE**

⁵ Please see the executed “Written Consent of the Manager of Yield Capital LLC” at page 1 of 2 in **Exhibit A**.

⁶ Of course, Plaintiffs contend this legal malpractice matter should not be compelled into arbitration for any reason but this amendment is yet another reason for denying the Defendants’ motion.

ENTIRETY OF THEIR REQUIRED INVESTMENT AMOUNTS UNDER THE APPLICABLE SUBSCRIPTION AGREEMENTS SHALL BE CONSIDERED MEMBERS FOR PURPOSES OF BEING ENTITLED TO INITIATE AN ARBITRATION. DISPUTES CONCERNING WHETHER A PARTY WHO INITIATES AN ARBITRATION HAS STANDING TO DO SO AS A MEMBER SHALL NOT BE DETERMINED BY THE ARBITRATOR BUT RATHER BY A COURT OF COMPETENT JURISDICTION. (Emphasis supplied.)

Likewise, the arbitration language contained in the Third LLC Agreement, which is discussed in detail below, also prohibits the Defendants from seeking arbitration.

SUPPLEMENTAL ARGUMENT CONCERNING THE OPERATING AGREEMENTS AND ARBITRATION

Even under the Defendants’ misguided argument that the dispute between the Plaintiffs and their lawyers is subject to arbitration, Defendants are not entitled to arbitration because, Soria, a Series of Belltower, LLC (“Soria”)⁷, has never paid the “entirety” of its \$150,000.00 “required investment amounts.” Thus, Soria would not be entitled to invoke this arbitration provision⁸.

This point concerning payment is made clear in the Plaintiffs’ Complaint at paragraphs 28 and 29 on page 6 which state as follows:

28. The Defendants created Soria, a series of Belltower, LLC (“Soria”), which is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Greenville County, South Carolina to invest in Stellar Naomi the **purported** sum of \$150,000.00. (Emphasis supplied.)

29. The Defendants claim their \$150,000.00 investment in Stellar Naomi was **“paid”** by uncharged legal work they performed for the Plaintiffs. (Emphasis supplied).

⁷ In a convoluted manner, and as is more fully described in the original memorandum in opposition, the Defendants are trying to bootstrap the First LLC Agreement arbitration provision via Soria. Of course, this is a legal malpractice action and Soria is **NOT** a law firm but Defendant Campbell Teague, LLC is even though both Soria and Defendant Campbell Teague, LLC have the same members.

⁸ The Individual Defendants created Soria to invest in Stellar Naomi, a series of Yield Capital, LLC and did so in violation of the South Carolina Rules of Professional Conduct as per the expert affidavit filed in this matter. To now invoke this unethical conduct to bootstrap arbitration is beyond the pale.

Purported is defined as to pretend to be or do something, especially in a way that is not easy to believe.⁹ Likewise the use of the quotes around the single word “paid” indicates and implies that the Plaintiff doesn’t agree with the use of the term.¹⁰ Thus, it is Plaintiffs’ position that the “required investment amount” was never paid by Soria, the entity the Defendants mistakenly depend on to invoke arbitration. Furthermore, viewing the timeline in the light most favorable to the Defendants, the Second LLC Agreement was the operative agreement which was in effect when they filed their motion to compel arbitration. As will be discussed below, the Third LLC Agreement, which is in effect currently, has additional restrictive language prohibiting the Defendants from invoking the right to arbitration.¹¹

In concluding the analysis of the Second LLC Agreement and anticipating that Soria will contend that it has in fact paid the “required investment amount,” the dispute over the payment or non-payment and the resulting rights (if any) of Soria is an issue that must be submitted to a “Court of competent jurisdiction” before it can seek to compel arbitration. There is no agreement to submit complaints of legal malpractice into arbitration. Soria is not a party to the attorney client relationship that the Plaintiffs enjoyed with Defendant George Campbell and his law firm, Defendant Campbell Teague, LLC.

In fact, as it relates to the attorney client relationship, Soria is **NEITHER** a law firm **NOR A CLIENT**¹². Even if Soria could argue to draft a non-party into arbitration under the operable Second LLC Agreement, Soria **NEVER PAID** the “entirety” of its “required investment amounts” and is precluded from doing so. Based on the four corners of the Second LLC Agreement, the

⁹ See Cambridge Dictionary at <https://dictionary.cambridge.org/us/dictionary/english/purport>.

¹⁰ See Grammarly at “When to Put Quotation Marks Around a Single Word.”

¹¹ This agreement would also block the Defendants’ motion to compel arbitration.

¹² Soria is an investment vehicle the Individual Defendants created to unethically invest in its client’s business.

Defendants attempt to bootstrap the Soria arbitration provision for the benefit of Defendant Campbell Teague, LLC, fails as a matter of law.

The Third LLC Agreement, effective as of June 1, 2023, also contains restrictive language concerning arbitration. On page 25 of **Exhibit B** at the Arbitration Section 12.6(b) the current operating agreement states as follows:

(b) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A MEMBER'S RIGHTS TO INITIATE OR PURSUE ARBITRATION UNDER THIS AGREEMENT SHALL IMMEDIATELY TERMINATE UPON THE REMOVAL OF SUCH MEMBER FOR ANY REASON AS PROVIDED FOR UNDER SECTION 5.1 (INCLUDING REMOVAL BY EXERCISE OF THE LLC'S CALL RIGHT UNDER SECTION 9.5). **ONLY THOSE MEMBERS WHO HAVE PAID THEIR INITIAL CAPITAL CONTRIBUTIONS AS REQUIRED BY THEIR SUBSCRIPTION AGREEMENTS WILL BE CONSIDERED MEMBERS FOR PURPOSES OF BEING ENTITLED TO INITIATE AN ARBITRATION.** THE MANAGER MAY SELECT A CERTIFIED PUBLIC ACCOUNTANT TO DETERMINE WHETHER A PARTY HAS PAID ITS INITIAL CAPITAL CONTRIBUTION, AND THE DETERMINATION OF THAT ACCOUNTANT WILL BE DEEMED TO CONCLUSIVELY ESTABLISH WHETHER THAT PAYMENT WAS MADE. **DISPUTES CONCERNING WHETHER A PARTY WHO INITIATES AN ARBITRATION HAS STANDING TO DO SO AS A MEMBER SHALL NOT BE DETERMINED BY THE ARBITRATOR BUT RATHER BY A COURT OF COMPETENT JURISDICTION.** (Emphasis supplied.)

Once again, the Individual Defendants' entity Soria has never paid its initial capital contribution. Thus, Soria, a party not even named in this legal malpractice action because it is **NOT A LAW FIRM** and thus could never have an attorney-client relationship with any Plaintiff, has no standing to bring an arbitration action under the current effective operating agreement of Yield Capital, LLC.

Furthermore, if the Individual Defendants wish to contest this threshold payment issue it must do so in a "**COURT OF COMPETENT JURISDICTION**" and not via arbitration as they

seek via their motion to compel arbitration. Under both the Second LLC Agreement and the Third LLC Agreement the Defendants' motion to compel arbitration must fail.

SUPPLEMENTAL ARGUMENT CONCERNING DEFENDANTS' 12(b)(6) MOTION TO DISMISS PLAINTIFFS' DEFAMATION *PER SE* CAUSE OF ACTION

The Defendants motion to dismiss the Plaintiffs' defamation *per se* cause of action illustrates a failure to miscomprehend well-establish South Carolina law concerning defamation. In defamation cases, South Carolina Courts utilize the "continuing publication rule" as per *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 594 S.E.2d 878 (Ct. App. 2004).

Via this ruling South Carolina adheres to the continuing publication rule and not the more common single publication rule. This is especially true of internet publications when changes or modifications are made to revamp the website and/or using a new URL address to make an article more visible or searchable to a new audience, etc. Furthermore, *Moosally* was subsequently utilized by the United States District Court in *Taub v. McClatchy Newspapers, Inc.*, Civil Action No.9:05-678 in an opinion on August 7, 2007, denying summary judgment concerning a defamatory article on a newspaper's website.

As per the four corners of Plaintiffs' complaint these are the same types of allegations before this Court. A Spanish newspaper's website has continued to publish Defendant George Campbell's defamatory statements on its web site. It is Plaintiffs' understanding that the Spanish lawsuit that the Defendants point to only addresses the initial articles and **not** the continuing publication of the offensive articles or, **more importantly**, the additional defamatory statements Defendant George Campbell has made as is alleged in paragraph 72 of the Plaintiffs' Complaint.

Paragraph 72 of the Plaintiffs' Complaint states as follows: "The above referenced statements¹³, as well as **other similar multiple statements** made by Campbell, are defamation

¹³ These "statements" are the Spanish newspaper articles.

per se.” (Emphasis supplied.) This paragraph in and of itself is sufficient to survive the Defendants’ 12(b) (6) motion because it encompasses both the continuing publication of the offensive Spanish articles as well as **additional statements** which are not part of the Spanish lawsuit. Therefore, as a matter of law, Defendants’ motion to dismiss the Plaintiffs’ defamation *per se* cause of action must fail.

CONCLUSION

For the reasons stated herein, as well as for the numerous reasons stated in Plaintiffs’ June 8, 2023, memorandum in opposition, the Defendants’ multiple motions before this Court must be denied.

Charleston, South Carolina
August 15, 2023

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**EXHIBIT
A**

ELECTRONICALLY FILED - 2023 Aug 15 11:06 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301567

**WRITTEN CONSENT OF THE MANAGER
OF
YIELD CAPITAL LLC**

The undersigned, being the manager of Yield Capital LLC (the “**Manager**”), a Delaware limited liability company (the “**Company**”), acting by written consent without a meeting pursuant to Section 18-404 of the Delaware Limited Liability Company Act, and Section 12.4 of the First Amended and Restated Company Agreement of the Company (the “**Original Company Agreement**”), does hereby consent to the adoption of the following resolutions:

WHEREAS, the Manager has determined that it is in the best interests of the Company to amend and restate the Original Company Agreement, as shown in the proposed Amended and Restated Company Agreement attached hereto as Exhibit A (the “**Second Amended and Restated Limited Liability Company Agreement**”).

NOW THEREFORE LET IT BE:

RESOLVED, that the Manager declares it advisable and in the best interests of the Company to amend and restate in its entirety the Original Company Agreement, as set forth in the Amended and Restated Company Agreement.

RESOLVED, that the Amended and Restated Company Agreement is hereby adopted and approved.

RESOLVED, that the manager be authorized and directed to do and perform or cause to be done and performed all such acts, deeds and things, and to make, execute and deliver, or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments or certificates in the name of the Company and to retain such counsel, agents and advisors and to incur and pay such expenses, fees and taxes as shall, in the opinion of the manager of the Company executing the same, be deemed necessary or advisable (such necessity or advisability to be conclusively evidenced by the execution thereof) to effectuate or carry out fully the purpose and interest of all of the foregoing resolutions; and that any and all such actions heretofore or hereafter taken by the manager relating to and within the terms of these resolutions be, and they hereby are, adopted, affirmed, approved and ratified in all respects as the act and deed of the Company; and

RESOLVED, that an executed copy of this Written Consent shall be filed with the minutes of the proceedings of the Manager.

Execution page follows

IN WITNESS WHEREOF, the undersigned manager has duly executed this Written Consent as of the dated stated opposite its signature.

STELLAR, LLC

Date: 10/30/2022

By: 
David Engel
Manager

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Exhibit A
Amended and Restated Limited Liability Company Agreement

See attached

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**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

YIELD CAPITAL LLC

A DELAWARE LIMITED LIABILITY COMPANY**

THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES ACTS OR LAWS OF ANY STATE OR TERRITORY IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION UNDER THOSE ACTS. BY ACQUIRING INTERESTS REPRESENTED BY THIS LIMITED LIABILITY COMPANY AGREEMENT, EACH MEMBER REPRESENTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF ITS INTERESTS WITHOUT COMPLIANCE WITH THE PROVISIONS OF THIS LIMITED LIABILITY COMPANY AGREEMENT AND REGISTRATION OR OTHER COMPLIANCE WITH THE AFORESAID ACTS AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

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**SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT
OF
YIELD CAPITAL LLC
A DELAWARE LIMITED LIABILITY COMPANY**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT is made and entered into by and among Yield Capital LLC, the Manager, and the Persons and Members whose Capital Contributions are listed on the Information Exhibit annexed to the Series Agreements attached as Exhibit B (whose Member Confidential Information may be redacted pursuant to Section 11.1). Unless otherwise indicated, capitalized words and phrases in this Amended and Restated Limited Liability Company Agreement shall have the meanings set forth in the Glossary of Terms attached as Exhibit C hereto.

Recitals

- A. WHEREAS, the LLC was formed under the laws of the State of Delaware by the filing of the Certificate with the Secretary of the State of Delaware on August 30, 2019;
- B. WHEREAS, the LLC, the Members, and the Manager entered into a Limited Liability Company Agreement of Yield Capital LLC, as later amended and restated by the Manager pursuant to Section 12.4 thereof (the “*First Amended and Restated Agreement*”);
- C. WHEREAS, Section 12.4 of the First Amended and Restated Agreement provides that it “may be amended only in writing by the Manager”;
- D. WHEREAS, the Manager wants to amend and restate the First Amended and Restated Company Agreement in its entirety as set forth herein for the purposes of, and on the terms and conditions set forth in, this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
FORMATION**

1.1 **Formation; General Terms; Effective Date.** The LLC was formed on August 30, 2019 upon the filing of the Certificate with the Delaware Secretary of State. A copy of the Certificate is attached hereto as Exhibit A.

(a) The rights and obligations of the Members and the terms and conditions of the LLC shall be governed by the Act and this Agreement, including all the Exhibits to this Agreement. Unless otherwise required by law, if and to the extent the Act and this Agreement are inconsistent with respect to any subject matter covered in this Agreement, this Agreement shall govern. Unless otherwise required by law, if and to the extent this Agreement and a Series Agreement are inconsistent with respect to any subject matter covered in this Agreement, the

Series Agreement shall govern. This Agreement shall be effective as of the date executed below by the Manager (the “**Effective Date**”).

(b) The Manager shall execute and file on behalf of the LLC all other instruments or documents, and shall do or cause to be done all such filing, recording, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the continuation and operation of a limited liability company in Delaware and in the other jurisdictions in which the LLC shall transact business.

1.2 **Name.** The name of the LLC shall be YIELD CAPITAL LLC. The business of each Series shall be conducted under the name of the Series and not under the name of the LLC generally. The Manager may amend the Certificate or any Series Agreement at any time to change the name of the LLC or Series, as the case may be. The Manager shall provide each Member with notice of any name change of the LLC and each Member associated with a Series with notice of any name change of the Series.

1.3 **Principal Office.** The principal office of the LLC and each Series shall be 16192 Coastal Hwy Lewes Delaware 19958 or such other place as the Manager may designate from time to time.

1.4 **Purpose.** The LLC shall not own any assets other than assets associated with one or more Series or cash being held on behalf of a Person in anticipation of such Person purchasing Interests in future Series to be established by the LLC nor shall the LLC have Unitholders with economic interests in the LLC apart from their interest in one or more Series. The purpose of the LLC shall be to establish Series and the purpose of each Series shall be (i) to raise capital to make debt and equity investments (a “**Series Investment**”) from time to time in companies, real estate, equipment, and ancillary businesses and investments related to or operating in the legal medical and recreational marijuana industry; (ii) to own, hold, maintain, encumber, lease, sell, transfer or otherwise dispose of all property or assets or interests in property or assets as may be necessary, appropriate or convenient to accomplish the activities described in clause (i) above; (iii) to incur indebtedness or obligations in furtherance of the activities described in clauses (i) and (ii) above; and (iv) to conduct such other activities as may be necessary or incidental to the foregoing, all on the terms and conditions and subject to the limitations set forth in this Agreement.

1.5 **Registered Agent; Registered Office.** The LLC’s registered agent and registered office are set forth in the Certificate, and may be changed from time to time by the Manager, in which case the Manager shall file any documentation required by the Act.

1.6 **Commencement and Term.** The LLC commenced at the time and on the date appearing in the Certificate and shall continue in existence until it is dissolved, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement. Except as otherwise provided in a Series Agreement, a Series will commence upon its establishment hereunder and shall continue in existence until it is terminated, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement.

1.7 **Tax Classification.** The parties acknowledge that because the LLC owns no assets other than assets associated with a Series and all of the Unitholders are associated with one or more

Series and have no economic interest in the LLC apart from their interest in one or more Series, the LLC will be treated as owning no assets and having no economic owners for federal income tax purposes. The parties further acknowledge that each Series that has more than one Unitholder associated with it shall be classified as a partnership for federal income tax purposes and that each Series that has only one Unitholder associated with it shall be disregarded as an entity separate from its owner for federal income tax purposes in each instance until the effective date of any election such Series may make to change its classification for federal income tax purposes to that of a corporation. It is agreed that the Manager shall have authority, on behalf of each Series and each Unitholder, to file and make such election to change the tax classification of a Series from a partnership or a disregarded entity to a corporation at such time as the Manager determines that such a change is in the best interests of the Series.

1.8 Establishment of Series.

(a) **Establishment of Series; Series Agreement.** The LLC may establish separate Series from time to time, as contemplated by Section 18-215 of the Act. The establishment and designation of any Series shall be effective upon the issuance of Interests associated with such Series and the execution by the applicable parties thereto of a Series Agreement setting forth such establishment and designation. The terms of each Series will be generally set forth in this Agreement and as specifically set forth in the applicable Series Agreement. For all purposes of the Act, this Agreement together with each Series Agreement entered into from time to time constitute the “limited liability company agreement” of the LLC within the meaning of the Act. Notwithstanding any other provision of this Agreement, the terms and provisions of any Series Agreement may not otherwise alter or amend any other terms and provisions of this Agreement or of any other Series Agreement. At any time that there are no Interests outstanding of any particular Series previously established and designated, the LLC may abolish that Series and the establishment and designation thereof. Without limiting the authority of the LLC to establish and designate further Series, the LLC hereby establishes and designates Series with each Series Agreement. Each time the LLC establishes and designates a new Series, the Series Agreement for that particular Series will be attached as Exhibit B to this Agreement.

(b) **Series Separateness.** Each Series will have (i) separate rights, powers, duties and management from each other Series, and (ii) exclusive rights with respect to the property, obligations, profits, and losses associated with the Series and all proceeds derived therefrom. No debt, liability, obligation or expense of a Series will be a debt, liability, obligation or expense of any other Series. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a Series will be enforceable against the assets of the Series only and not against any other assets of the LLC generally or any other Series, and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally, or any other Series will be enforceable against the assets of the Series. The records maintained for each Series will account for the assets associated with the Series separately from the other assets of the LLC, or any other Series, and assets associated with a Series may be held, directly or indirectly, including in the name of the Series, in the name of the LLC or otherwise. Notwithstanding the foregoing, any assets or liabilities of the LLC used by (or in connection with the activities of) more than one Series will be allocated to each Series by the Manager in accordance with any reasonable method determined by the Manager. Records maintained for a Series that reasonably identify its assets, including by specific listing, category,

type, quantity, computational or allocation formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of the assets is objectively determinable, will be deemed to account for the assets associated with the Series separately from the other assets of the LLC or any other Series. No assets of one Series may be commingled with the assets of any other Series or the assets, if any, of the LLC, generally.

(c) **Interests in a Series.** The Interests of each Series shall be separate and distinct from the Interests in any other Series. Upon admission to the LLC, each Member will be designated as a Member of a particular Series. A Member may be a member of more than one Series. Each Member shall have the rights, duties and powers as herein provided with respect to each Series of which it is a member. No Member shall have any interest in or rights with respect to any Series in which it does not hold an Interest. No Member shall have any right to vote on any matter pertaining to a particular Series, or with respect to the LLC generally, except as herein expressly provided. The Information Exhibit attached to the Series Agreement of each Series will be updated from time to time as is necessary to accurately reflect the information contained therein, including, without limitation, the admission of additional Members associated with the Series. In the event a Unitholder no longer has any Unpaid Investment Return and Unreturned Capital with respect to a particular Series, then such Unitholder's Units associated with such Series shall automatically terminate.

(d) **General Applicability.** The provisions of this Agreement which are generally applicable to the LLC, any Manager, and any Member or Unitholder, including, but not limited to, provisions regarding distributions, management, Interests and dissolution and termination shall be applicable to any Series, unless expressly provided otherwise.

ARTICLE II

CAPITAL CONTRIBUTIONS; ISSUANCE OF INTERESTS; CAPITAL ACCOUNTS

2.1 **Capital Contributions.** The Members associated with a Series shall make Capital Contributions to the Series when and as required by the Series Agreement of the Series. No Member shall be obligated to make additional capital contributions after their initial contribution unless specifically required by the Series Agreement.

2.2 **Maintenance of Capital Accounts; Withdrawals; Interest.** Individual Capital Accounts with respect to a Series shall be maintained for each of the Unitholders associated with such Series. No Unitholder shall be entitled to withdraw any part of its Capital Account or to receive any distribution except as provided in this Agreement or the applicable Series Agreement. No Unitholder shall be entitled to receive any interest on its Capital Contributions or with respect to its Capital Account. Each Unitholder shall look solely to the assets of the applicable Series for the return of its Capital Contributions and, except as otherwise provided in this Agreement or the applicable Series Agreement, shall have no right or power to demand or receive property other than cash from the applicable Series. No Unitholder associated with a Series shall have priority over any other Unitholder associated with the same Series as to the return of its Capital Contributions, distributions or allocations, except as provided in this Agreement or the applicable Series Agreement.

2.3 Issuance of Units; Designating Interests; Current Interests. In exchange for its Capital Contribution each Member shall receive an Interest. Each Member's Interest shall be associated with a Series and denominated in Units, and the relative rights, privileges, preferences and obligations with respect to the Member's Interest shall be determined under this Agreement and the Act and the applicable Series Agreement based upon the number of Units held by the Member with respect to the Member's Interest. In addition, upon investing in the LLC and acquiring an Interest associated with a Series, each Member shall receive his Investment Return, if any, on a quarterly or annual basis.

ARTICLE III DISTRIBUTIONS

3.1 Current Distribution of Investment Return. Prior to the termination of a Series, except as otherwise provided in the Series Agreement for such Series, cash shall be distributed from such Series to each Unitholder associated with such Series. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.2 Distribution of Investment Return Upon Return of Capital. Except as otherwise provided in a Series Agreement, when a Unitholder associated with a Series receives a distribution from such Series that reduces such Unitholder's Unreturned Capital with respect to such Series to zero, at such time cash shall also be distributed from such Series to the extent of such Unitholder's Unpaid Investment Return. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.3 Return of Capital Distributions. Except as otherwise provided in a Series Agreement, upon the repayment of a Series Investment, the principal portion of such repayment proceeds shall be distributed from such Series to the Unitholders in proportion to their Series Investment to the extent of each such Unitholder's Unreturned Capital and until all such repayment proceeds have been distributed. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.4 Tax Withholding. In the event any federal, foreign, state or local jurisdiction requires the LLC or any Series to withhold taxes or other amounts with respect to any Unitholder's allocable share of Profits, taxable income or any portion thereof, or with respect to distributions, the LLC or such Series shall withhold from distributions or other amounts then due to such Unitholder an amount necessary to satisfy the withholding responsibility. In such a case, the Unitholder for whom the LLC or Series has paid the withholding tax shall be deemed to have received the withheld distribution or other amount due and to have paid the withholding tax directly. Consequently, distributions to be made to a Unitholder pursuant to Sections 3.1, 3.2 or 3.3 will be reduced by any withholding made pursuant to this Section 3.4.

If it is anticipated that at the due date of the LLC's or Series' withholding obligation the Unitholder's share of cash distributions or other amounts due is less than the amount of the withholding obligation, the Unitholder with respect to which the withholding obligation applies shall pay to the LLC or the Series, as the case may be, the amount of such shortfall within ten (10) days after notice by the LLC or Series. In the event a Unitholder fails to make the required payment

when due hereunder, and the LLC or Series nevertheless pays the withholding, in addition to the LLC's or Series', as the case may be, remedies for breach of this Agreement, the amount paid shall be deemed a recourse loan from the LLC or Series to such Unitholder bearing interest at the Default Rate, and the LLC or Series shall apply all distributions (interim or liquidating) or payments that would otherwise be made to such Unitholder toward payment of the loan and interest, which payments or distributions shall be applied first to interest and then to principal until the loan is repaid in full.

3.5 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions (interim or liquidating) are subject to set-off by the LLC or Series for any past-due obligation of a Unitholder to the LLC or Series, respectively.

ARTICLE IV ALLOCATIONS

4.1 Profits and Losses. Except as otherwise provided in this Agreement or Series Agreement, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of a Series for each Fiscal Year shall be allocated among the Unitholders associated with such Series in a manner as the Manager in the exercise of his good faith discretion determines such that, after giving effect to the Regulatory Allocations Exhibit attached as Exhibit D hereto, the Capital Account of each Unitholder, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the distributions that would be made to such Unitholder pursuant to Section 10.4 if the Series were terminated, its affairs wound up and its assets were distributed to the Unitholders associated with such Series in accordance in accordance with Section 10.4.

4.2 Code Section 704(c) Tax Allocations. Income, gain, loss, and deduction with respect to any property contributed to the capital of a Series shall, solely for tax purposes, be allocated among the Unitholders associated with such Series so as to take account of any variation between the adjusted basis of such property to the Series for federal income tax purposes and its initial Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

If the Agreed Value of any Series asset is adjusted after its contribution to the Series, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

Any elections or other decisions relating to allocations under this Section shall be determined by the Manager of the Series. Absent a determination by the Manager, the remedial allocation method under Treasury Regulation § 1.704-3(d) shall be used. Allocations pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not be taken into account in computing any Unitholder's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

4.3 Miscellaneous.

(a) **Allocations Attributable to Particular Periods.** For purposes of determining Profits, Losses or any other items allocable to any period, such items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code § 706 and the Treasury Regulations thereunder. Absent such a determination, such items shall be determined on a daily basis.

(b) **Other Items.** Except as otherwise provided in this Agreement, all items of income, gain, loss, deduction, credit and any other allocations not otherwise provided for of a Series shall be divided among the Unitholders in the same proportion as they share Profits or Losses, as the case may be, for the year for such Series.

(c) **Tax Consequences; Consistent Reporting.** The Unitholders are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by those allocations as reflected on the information returns of a Series in reporting their shares of Series income and loss for income tax purposes. Each Unitholder agrees to report its distributive share of Series items of income, gain, loss, deduction and credit on its separate return in a manner consistent with the reporting of such items to it by the Series. Any Unitholder failing to report consistently, and who notifies the Internal Revenue Service of the inconsistency as required by law, shall reimburse the Series for any legal and accounting fees incurred by the Series in connection with any examination of the Series by federal or state taxing authorities with respect to the year for which the Unitholder failed to report consistently.

ARTICLE V MANAGEMENT; DUTIES

5.1 Management by the Manager; Limitations on Actual Authority; Title; Delegation of Authority; Compensation.

(a) **General Authority of the Manager.** The Manager in its sole and absolute discretion shall have complete authority and exclusive control to conduct any business on behalf of the LLC and any Series without the consent of any Member, and without a vote of any Member or Members, which authority may be delegated in part as provided in Subsection (d) of this Section. No Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series. It is the express intention of this Agreement to give the Manager of the LLC and the Manager of each Series the broadest authority possible under Delaware Law. For the avoidance of doubt and without limitation, the Manager may do any of the following without the consent of any Member of a Series:

- (i) Admit new Members
- (ii) Raise additional capital by debt at any interest rate or terms, and equity or debt/equity hybrid at any valuation or terms even if such additional capital dilutes or significantly dilutes existing Members.

(iii) The Manager may issue warrants, options, and other financial instruments to secure capital investment, or incentivize key employees for performance, even if such issuance dilutes or significantly dilutes existing Members.

(iv) Call the Interest of any Member in accordance with Section 9.5.

(v) Sell, merge, exchange, transfer, swap, enter into a reverse takeover, IPO, and SPAC (Special Purpose Acquisition Company) transaction. The Manager or Principals of the Manager or its affiliates may sponsor a SPAC and include the all or part of the assets of a Series in a SPAC transaction, and may concurrently be a Sponsor of the SPAC. Furthermore, the Manager may transfer, sell, merge, exchange, swap, borrow against all the assets of a Series without approval of Members of any Series.

(b) Each Subscriber authorizes and grants Manager full and absolute authority to execute all legal documents and contracts to consummate a roll-up transaction with other Series and related investments, if in the sole and absolute opinion of Manager that a roll-up transaction will benefit the Members of all Series. In the case of a roll-up, an independent third-party valuation, acquirer allocation of purchase price (e.g., SPAC), or investment banker or similar valuation of the relative value of each Series or related investment will be completed/conducted on each entity in the roll-up to determine each Serie's percentage ownership vis-à-vis other rolled up Series and other investments managed by Manager.

(c) **Right to Rely on Action of Any Manager; Manager's Liability for Unauthorized Acts.** Persons dealing with the LLC or any Series shall have no duty to inquire whether the act of any Manager in carrying on in the usual way the business of the LLC or any Series is pursuant to the Manager's actual authority under this Agreement, and such acts shall be binding upon the LLC and such Series regardless of whether such Manager had actual authority, unless the Person dealing with such Manager had actual knowledge that the Manager was exceeding his authority.

(d) **Manager's Titles.** The Manager may use the title "Manager" or such other title or titles as determined by the Manager.

(e) **Delegation of Authority.** The Manager may, but shall not be required to, delegate by written resolutions, which resolutions may be general or may be limited to specific matters, to one Person, several Persons or a committee of Persons (with such titles as the Manager shall select) any powers or authority granted to the Manager pursuant to this Agreement or pursuant to the Act. Delegation of any powers pursuant to this Subsection shall not of itself create an employment agreement or any other contract right. The Manager may withdraw any powers delegated pursuant to this Subsection at any time and from time to time with or without cause. The delegation of authority by the Manager pursuant to this Subsection shall not relieve the Manager from the duties and responsibilities set forth in the Act or in this Agreement.

(f) **Compensation; Reimbursement of Expenses.** The Manager shall receive compensation and Performance Fees for its services as Manager as specified in the Series Agreement and all agreements between the Series, the Manager, and the companies in which the Series invest. The LLC or a Series may reimburse any Manager for all reasonable expenses

incurred by such Persons in managing and conducting the LLC's or Series' business, including (but not limited to) overhead, administrative and travel expenses.

5.2 Number, Designation, Election and Removal of Managers.

(a) **Number, Designation, Execution of Agreement.** The LLC shall have one (1) Manager, who may but need not be a Member and who shall also serve as the Manager of each Series unless the Series Agreement of a particular Series provides otherwise. Stellar, LLC ("Stellar"), a Wyoming limited liability company, is the Manager of the LLC as of the Effective Date. Each Manager shall execute and be bound by the provisions of this Agreement and any applicable Series Agreement and shall serve until its death, resignation or removal. For the avoidance of doubt, if at any time Stellar ceases to serve as the Manager for a Series, then any reference to the Manager with respect to such Series shall refer to the then acting Manager. The Manager of the LLC and the Manager of each series may only be removed by unanimous consent of the Members and the Manager. The removal or resignation of a Manager, shall not affect the Manager's rights to receive Performance and other fees associated with a Series or subsequent Performance Fees resulting from a Sale, merger, exchange, transfer, swap, reverse takeover, SPAC (Special Purpose Acquisition Company) transaction, or IPO (initial public offering).

(b) **Resignation.** A Manager may resign as the Manager of a Series at any time upon giving written notice to the Members associated with such Series. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

(c) **Vacancies.** If a Manager ceases to be a Manager of a Series, the remaining Managers of such Series, if any, shall have authority to designate another Person to fill the vacancy, subject to the right of the Members associated with such Series to designate Managers as provided in Subsection (b) of this Section. If there are no remaining Managers of such Series, the Members associated with such Series may designate a new Manager(s) according to the voting procedure described in Subsection (b) of this Section. A vacancy created by an increase in the authorized number of Managers of a Series shall be filled only by the Members associated with such Series.

5.3 Ascertaining the Actions of the Manager. The requisite vote, consent, approval or ratification of the Manager with respect to any matter may be evidenced in writing signed by the Manager or may be ascertained and evidenced in any other formal or informal matter. The proceedings and deliberations of the Manager need not be in writing. If at any time there is more than one Manager of a Series, the Managers may establish procedures for holding meetings of the Managers of such Series, taking Manager action and evidencing the Manager action taken, which procedures may include notice requirements, and shall be binding on the Members associated with such Series and Managers of such Series to the extent specified in such procedures.

5.4 Standard of Conduct; Right to Rely; Limitation of Liability.

(a) **Standard of Conduct.** Each Manager, in managing the business or affairs of the LLC and any Series, will discharge his duties: (i) in a manner he believes in good faith to

be in the best interests of the LLC and/or applicable Series; (ii) in a manner he believes in good faith to represent the care an ordinarily prudent person in a like position would exercise under similar circumstances; (iii) in good faith reliance on the provisions of this Agreement and any applicable Series Agreement; and (iv) without intentional misconduct or a knowing violation of law. Except for the implied contractual covenant of good faith and fair dealing under applicable Delaware law, no Manager has any other duty to the LLC, any Series, any Unitholder or any other Person. The provisions of this Agreement replace, eliminate and otherwise supplant those duties (including fiduciary duties) that a Manager might otherwise have under applicable law, including the Act.

(b) **Right to Rely.** The Manager shall not be held liable to the LLC, any Series or to the Unitholders, for relying in good faith upon the records required to be maintained by this Agreement or upon such information, opinions, reports or statements prepared and presented by the Unitholders, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the LLC or any Series, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.

(c) **Limitation of Liability.** No Manager shall be liable to the LLC, any Series or any Unitholder for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Manager in good faith on behalf of the LLC and/or a Series and in a manner reasonably believed to be within the scope of authority conferred on such Manager by this Agreement, except that the foregoing exculpation shall not apply to any such loss, damage or claim incurred by reason of the gross negligence or willful misconduct of such Manager.

(d) **Applicability to Persons whom the Manager has Delegated Authority.** The Manager may, but is not required to, provide for the limitation of liability in excess of any limitation granted by the Act for Persons to whom the Manager delegates management authority.

5.5 **No Exclusive Duty.** No Manager shall be required to manage the LLC or any Series as its sole and exclusive function. Except as otherwise provided in this Agreement or a Series Agreement, a Manager, its owners, or Affiliates of the Manager or its owners may have other business interests and may engage in other activities in addition to those relating to the LLC or a Series. Neither the LLC, a Series nor any Unitholder associated with such Series shall have any right, by virtue of this Agreement, to share or participate in such permitted investments or activities of a Manager or its owners or any Affiliate of a Manager or its owners or in the income or proceeds derived therefrom. A Manager shall devote that amount of time to a Series as is necessary to manage and supervise the business and affairs of the Series in accordance with this Agreement.

5.6 **Indemnification.** To the fullest extent provided or allowed by law, the LLC shall indemnify, hold harmless and defend its Managers, employees and agents (including any Person to whom the Manager has delegated authority) (each, a "**Covered Person**") for all costs, losses, liabilities and damages paid or incurred by such Covered Persons in connection with the business of the LLC and any Series, except for acts or omissions for which the Covered Person is not absolved from liability under Section 5.4(c). Notwithstanding any other provision of this Agreement, any indemnification under this Agreement will be provided only out of LLC assets in the case of an indemnification obligation payable by the LLC or only out of the assets of a

particular Series in the case of an indemnification obligation payable that Series, and no Unitholder (or Related Party to or Affiliate of the Unitholder) will have personal liability for indemnification.

ARTICLE VI MEMBERS

6.1 Duties of Members. Except as otherwise provided in this Agreement, a Member who is not also a Manager owes no duties to the LLC, to any Series or to the Unitholders solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement or a Series Agreement, exercises some or all of the rights of a Manager in the management and conduct of the LLC's or a Series' business is held to the standards of conduct applicable to Managers under this Agreement or any applicable Series Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Liability of Members. No Member shall be liable for any debts or losses of capital or profits of the LLC or any Series.

6.3 No Agency Authority. Except as expressly provided in this Agreement, no Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series.

6.4 Representations and Warranties of Members. Each Member, and in the case of a Member who is a Person other than an individual, the Person(s) executing this Agreement on behalf of such Member, hereby represents and warrants to the LLC, the Series such Member is associated with and each other Member of such Series: (a) that if that Member is a Person other than an individual, it is duly organized, validly existing and in good standing under the law of its state of organization; (b) the Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder, and that all actions necessary for the due authorization, execution, delivery and performance of this Agreement by that Member have been duly taken; (c) the Member has duly executed and delivered this Agreement; (d) the Member's authorization, execution, delivery and performance of this Agreement do not conflict with any other agreement or arrangement to which the Member is a party or by which the Member is bound; (e) that the Member is acquiring its Interest for the Member's own account as an investment and without an intent to distribute the Interest; and (f) that the Member acknowledges that the Interests have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements. The inclusion of the foregoing does not constitute an acknowledgment that an Interest is a security under applicable law, and the LLC reserves the right to contest whether an Interest in the LLC constitutes a security.

6.5 Indemnification for Breach. Each Member shall and does hereby agree to indemnify and hold harmless the LLC, any Series in which such Member is associated and the other Members of such Series from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty on the part of such Member and such Member's breach of any other provision of this

Agreement. All such losses, costs, liabilities, damages and expenses sustained by the LLC, any Series in which such Member is associated with or any other Member of such Series arising out of any willful breach of this Agreement by such Member may be offset against distributions (interim and liquidation) or payments otherwise due to such Member.

ARTICLE VII MEMBER MEETINGS

7.1 **No Required Meetings.** The Members may but shall not be required to hold any annual, periodic or other formal meetings. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of Members called pursuant to the procedures in the following Section or may be given in accordance with the procedure prescribed in Section 7.3 for written consent to action in lieu of actual meetings.

7.2 Meetings of the Members.

(a) **Call for Meetings.** Meetings of the Members associated with a Series may be called only by the Manager.

(b) **Notice of Meetings.** The Manager calling a meeting of the Members shall deliver notice thereof to all of the Members associated with such Series. Any notice regarding a meeting shall be in writing and shall set forth the date and time of the meeting, the nature of the business to be transacted, and, unless the meeting is a conference call meeting, the place of the meeting. Notice of any meeting shall be given pursuant to Section 12.1 below to the Members not less than seven (7) days prior to the meeting.

(c) **Waiver of Notice.** Any notice of a meeting of the Members required to be delivered to any Member under this Agreement or the Act may be waived in writing by that Member (whether before, during or after that meeting). Notice of any meeting of the Members shall be deemed to have been waived by attendance at the meeting, unless the Member attends the meeting solely for the purpose of objecting to holding the meeting or transacting particular business at the meeting and so objects at the beginning of the meeting. Any action taken at a meeting of the Members at which proper notice was not delivered to, or waived by, all of the Members entitled to notice will be null and void and of no effect whatsoever.

(d) **Record Date.** For the purpose of determining the Members entitled to receive notice of, or to vote at, any meeting of the Members or any adjournment thereof or entitled to take any other action (including informal action authorized by the following Section), the Person(s) requesting such meeting or seeking such informal action may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than five (5) days prior to any such meeting or action.

(e) **Place of Meetings; costs.** The Manager may designate any place, either within or outside the State of Delaware, as the place of meeting for any meeting of the Members. Meetings may be virtual by computer video conferencing service or conference calls. The costs of holding meetings of the Members are to be paid by the applicable Series. **Voting.** Except as otherwise expressly provided in this Agreement, the vote, consent, approval or ratification of a majority in Interest of the Members associated with a particular Series shall be required in order

to constitute Member action. Each Member shall have that number of votes equal to such Member's number of Units associated with the Series.

(g) **Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney in fact. Such proxy shall be filed with the Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

(h) **Manner of Meetings.** Members may participate in a meeting by any communication by means of which all participating Members can hear and speak to each other during the meeting. A Member participating in a meeting is deemed to be present in person at the meeting, except where a Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. A meeting of the Members may be held via conference call with no physical location designated as the place of the meeting. The Manager calling a conference call meeting shall be responsible for arranging the conference call and shall specify in the notice of the conference call meeting the method by which the Members can participate in the conference call. The Manager will designate the person who is to preside, over the meeting. If the Manager fails to designate someone to chair a meeting of the Members, the Members shall elect by a majority in Interest of those Members present a Member to preside over the meeting, and the meeting shall be conducted pursuant to the Robert's Rules of Order. The presiding Person shall cause a record to be kept of the meeting, which shall be filed with the Series' permanent records.

7.3 **Written Consent to Action in Lieu of Actual Meetings.** Any action that is permitted or required to be taken by the Members associated with a Series may be taken or ratified by written consent setting forth the specific action to be taken, which written consent is (a) delivered to all of the Members associated with such Series in the manner provided in Section 12.1, (b) signed within thirty (30) days of being sent by that number of such Members holding the number of votes required in order to take the specified action and (c) is delivered to the Manager to be included in the Series' permanent records. The written consent may be signed in one or more counterparts.

ARTICLE VIII TRANSFER OF INTERESTS

8.1 **In General.** Except as otherwise set forth in this Article, no Unitholder shall Transfer all or any portion of its Interest without the prior written consent of the Manager of the Series to which the Interest is associated, which consent may be given or withheld in the sole discretion of the Manager. Any Transfer which does not comply with the provisions of this Article shall be void.

8.2 **Rights of Assignees.**

(a) Any Person (who is not already a Member) taking or acquiring, by whatever means, the Interest of any Unitholder and is not admitted as a Member pursuant to the following Section shall become an assignee with respect to such Interest.

(b) An assignee with respect to an Interest is entitled only to receive distributions and allocations with respect to such Interest as set forth in this Agreement or applicable Series Agreement, and shall have no other rights, benefits or authority of a Member under this Agreement, a Series Agreement or the Act, including without limitation no right to receive notices to which Members are entitled under this Agreement or a Series Agreement, no right to vote, no right to access to information concerning the LLC's or a Series' transactions, no right to inspect or copy the books or records of the LLC or a Series, and no other rights of a Member under the Act, this Agreement or a Series Agreement. Provided, however, the Interest of an assignee shall be subject to all of the restrictions, obligations and limitations under this Agreement, the applicable Series Agreement and the Act, including without limitation the restrictions on Transfer of Interests contained in this Article and subject to any claims or offsets the LLC or applicable Series has against the assignor of such Interest, regardless of whether those claims or offsets exist at the time the assignee takes or acquires such Interest or arises afterwards. An amendment to this Agreement may change the rights of an assignee, even if the amendment is made after the assignee takes or acquires the Interest.

(c) Notwithstanding anything to the contrary in this Agreement, an assignee shall not be entitled to receive any distributions from a Series until such assignee delivers to the Manager written notice of the Transfer, proof of the Transfer deemed sufficient by the Manager, the assignee's federal and state tax identification numbers, the assignee's current legal address and telephone number, and such other information as the Manager may reasonably request.

(d) No Member shall be permitted to Transfer the Capital Account or rights to distributions and allocations with respect to an Interest and retain any of the other rights attendant to his Interest. Moreover, a Member shall not be permitted to Transfer the management participation and other noneconomic rights attendant to an Interest. A Member who Transfers all of the Member's Capital Account and rights to distributions and allocations with respect to the Member's entire Interest associated with a Series ceases to be a Member associated with such Series pursuant to Section 9.1(a) below.

8.3 Admission of Assignees as Members.

(a) Any Person (who is not already a Member) who takes or acquires, by whatever means, the Interest of any Unitholder in the LLC shall be admitted as a Member only upon the written consent of the Manager. The giving or withholding of such consent shall be in the sole, absolute and arbitrary discretion of the Manager. In addition, except as otherwise provided in this Agreement, no Person shall be admitted as a Member unless such Person:

- (1) Elects to become a Member by executing and delivering such Person's written acceptance and adoption of the provisions of this Agreement and the applicable Series Agreement;
- (2) Executes, acknowledges and delivers to the LLC such other instruments as the LLC may deem necessary or advisable to effect the admission of such Person as a Member; and
- (3) Pays a transfer fee to the Series in an amount sufficient to cover all reasonable expenses of the LLC and/or Series connected with the admission of such Person as a Member.

(b) An assignee who becomes a Member is liable for the obligations of the transferor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Agreement or the applicable Series Agreement. Whether or not an assignee becomes a Member, the transferor is not released from the transferor's liability to the LLC and any applicable Series.

(c) Notwithstanding anything herein to the contrary, if at any time the LLC has only one Member or there is only one Member associated with a particular Series, and if that Member's entire Interest is sold, assigned, or transferred, then the transferee(s) of such Member's Interest shall automatically be admitted as a Member.

8.4 Distributions and Allocations With Respect to Transferred Interests. If any Interest is sold, assigned or transferred during any Fiscal Year in compliance with the provisions of this Article, then (i) Profits, Losses and all other items attributable to the Interest for such period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code § 706(d), if applicable, using any conventions permitted by the Code and selected in accordance with Section 11.5; (ii) all distributions on or before the date of such sale, assignment or transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee; and (iii) the transferee shall succeed to and assume the Capital Account, Percentage Interest and Capital Contribution obligation amounts, and other similar items of the transferor to the extent related to the transferred Interest. Solely for purposes of making the allocations and distributions, the LLC shall recognize such transfer not later than the end of the calendar month during which the LLC receives notice of such transfer. If the LLC does not receive a notice stating the date the Interest was transferred and such other information as the LLC may reasonably require within thirty (30) days after the end of the Fiscal Year during which the transfer occurs, then all of such items shall be allocated, and all distributions shall be made to the Person who, according to the books and records of the LLC on the last day of the Fiscal Year during which the transfer occurs, was the owner of the Interest. Neither the LLC nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not any Manager or the LLC had knowledge of any transfer of ownership of any Interest.

8.5 Right of First Refusal.

(a) **Offered Units.** At any time, the Manager of a particular Series, or if such Series does not have a Manager, the Manager of the LLC, (the "**ROFR Rightholder**") shall have a right of first refusal if any Member of such Series (each an "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of the Units it owns in such Series (the "**Offered Units**").

(b) **Offering; Exceptions.** Each time the Offering Member receives an offer for to Transfer of any of its Units (or applicable Unit Equivalents) (other than Transfers that (i) are permitted by Section 8.1, or (ii) are made pursuant to the LLC's call rights under Section 9.5.), the Offering Member shall first make an offering of the Offered Units to the ROFR Rightholder prior to Transferring such Offered Units to the proposed purchaser.

(c) **Offer Notice.**

(i) The Offering Member shall, within five (5) Business Days of receipt of the Transfer offer, give written notice (the “**Offer Notice**”) to the ROFR Rightholder stating that it has received a bona fide offer for a Transfer of its Units (or applicable Unit Equivalents) and specifying: (1) the number of Offered Units to be Transferred by the Offering Member; (2) the proposed date, time, and location of the closing of the Transfer, which shall not be less than 60 (sixty) days from the date of the Offer Notice; (3) the purchase price per Offered Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and (4) the name of the Person who has offered to purchase such Offered Units.

(ii) The Offer Notice shall constitute the Offering Member’s offer to Transfer the Offered Units to ROFR Rightholder, which offer shall be irrevocable until the end of the ROFR Option Period described in Section 8.5(d)(ii).

(iii) By delivering the Offer Notice, the Offering Member represents and warrants to the ROFR Rightholder that: (1) the Offering Member has full right, title, and interest in and to the Offered Units; (2) the Offering Member has all the necessary power and authority and has taken all necessary action to Transfer such Offered Units as contemplated by this Section 8.5; and (3) the Offered Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(d) **Exercise of Right of First Refusal.**

(i) Upon receipt of the Offer Notice, the ROFR Rightholder shall have the right to purchase no less than all of the Offered Units.

(ii) The ROFR Rightholder may exercise its right to purchase the Offered Units by delivering a written notice (a “**ROFR Exercise Notice**”) to the Offering Member within fifteen (15) Business Days following the receipt of the Offer Notice (such period, the “**ROFR Option Period**”). The ROFR Exercise Notice shall state the ROFR Rightholder’s intention to purchase all of the Offered Units on the terms and at the purchase price set forth in the Offer Notice. Any ROFR Exercise Notice shall be binding upon delivery and irrevocable by the ROFR Rightholder.

(iii) If the ROFR Rightholder does not deliver a ROFR Exercise Notice by the end of the ROFR Option Period, the ROFR Rightholder will be deemed to have waived its rights of first refusal under this Section 8.5 with respect to the Transfer of Offered Units, but shall not affect their respective rights with respect to any future Transfers.

(e) **Consummation of Sale.** If the ROFR Rightholder exercises its rights to purchase the Offered Units, then the Offering Member shall sell, and the ROFR Rightholder shall purchase such Offered Units within sixty (60) days following the expiration of the ROFR Option Period (which period may be extended for a reasonable time not to exceed ninety (90) days to the extent reasonably necessary to obtain required approvals or consents from any Governmental Authority). The Offering Member shall take all actions reasonably necessary to consummate the sale contemplated by this Section 8.5(e), including, without limitation, entering into agreements and delivering certificates and instruments and consents as the ROFR Rightholder may deem necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 8.5(e),

the Offering Member shall deliver to the ROFR Rightholder certificates (if any) representing the Offered Units to be sold, free and clear of any liens or encumbrances (other than those contained in this Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the ROFR Rightholder by certified or official bank check or by wire transfer of immediately available funds.

(f) **Sale to Proposed Purchaser.** If the ROFR Rightholder does not elect in the aggregate to purchase the Offered Units, then the Offering Member may Transfer all of such Offered Units, at a price per Offered Unit not less than specified in the Offer Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offer Notice, but only if such Transfer occurs within ninety (90) days after expiration of the ROFR Option Period. Any Offered Units not Transferred within such 90-day period will be subject to the provisions of this Section 8.5 upon subsequent Transfer.

ARTICLE IX CESSATION OF MEMBERSHIP

9.1 **Cessation Events.** A Person who is a Member shall cease to be a Member with respect to a particular Series only upon the occurrence of one of the following events:

- (a) The sale, assignment or transfer as permitted under this Agreement or by operation of law of the Member's entire Interest associated with such Series. A pledge or hypothecation as permitted under this Agreement shall not result in the cessation of Membership.
- (b) The occurrence of an Event of Bankruptcy with respect to the Member.
- (c) In the case of an individual Member, the Member's death.
- (d) In the case of an individual Member, the adjudication by a court that the Member is incompetent to manage his person or property.
- (e) In the case of a Member that is acting as a Member by virtue of being the trustee of a trust, the termination of the trust.
- (f) In the case of a Member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the Member.
- (g) In the case of a Member that is a corporation, the dissolution of the Member, the revocation of its charter, or the suspension of its right to conduct business by the jurisdiction of its incorporation unless within 30 days after such dissolution or the corporation's actual notice of the revocation or suspension, the dissolution is revoked or the corporation's charter or right to do business is reinstated.
- (h) The entry by any court of an order to charge the Interest of the Member associated with such Series.
- (i) As provided in Section 1.8(c), and 5.1(d)(e)(f).

9.2 **No Voluntary Withdrawal.** A Member is not entitled to withdraw voluntarily from the LLC.

9.3 **Deceased, Incompetent, Bankrupt, or Dissolved Members.** The personal representative, executor, administrator, guardian, conservator or other legal representative of a deceased individual Member or of an individual Member who has been adjudicated incompetent may exercise the rights of such former Member for the purpose of administration of such deceased Member's estate or such incompetent Member's property. The beneficiaries and heirs of any deceased Member who are not already Members shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. Upon the occurrence of an Event of Bankruptcy with respect to a Member the legal representative of such former Member may exercise the rights of such former Member for the purpose of administration of such former Member's estate or such former Member's property. If a Member who is a Person other than an individual is dissolved, the legal representative or successor of such Person may exercise the rights of the former Member pending liquidation. The distributees of such Person shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. A purchaser of a Member's Interest at a foreclosure sale shall be an assignee with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3.

9.4 **Consequences of Cessation of Membership.** If a Person ceases to be a Member with respect to a particular Series as provided in Section 9.1 above, such former Member (or such former Member's successor in interest) shall continue to be liable for all of the obligations of the former Member to the LLC and any Series in which the former Member is associated with, including any obligation to make Capital Contributions. Such former Member (or such former Member's successor in interest) shall be an assignee with respect to the Interest associated with such Series that such Person continues to own, if any, with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only after complying with the provisions of Section 8.3.

9.5 **Call Right.**

(a) **Right to Purchase.** Notwithstanding any other provisions of this agreement, at any time on or after the Effective Date (the "**Call Commencement Date**"), the LLC has the continuing option and right (the "**Call Right**"), but not the obligation, to cause any Member or its transferee (the "**Call Seller**") to sell all of its Units (the "**Call Units**") to the LLC in accordance with this Section 9.5. The LLC may exercise the Call Right in its sole discretion.

(b) **Call Right Procedures; Purchase Price.**

(i) The LLC may exercise the Call Right by delivering to the Call Seller a written notice (the "**Call Exercise Notice**") stating its election to purchase the Call Units from the Call Seller for a specified purchase price (the "**Call Purchase Price**"). The Call Purchase Price will be equal to the fair market value of the Call Units; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest

of the LLC or a Series then the purchase price will be equal to, at the Manager's election, (1) the fair market value of the Call Units, (2) the balance of the Call Seller's Capital Account, or (3) the investment amount specified in the Call Seller's Subscription Agreement. The Manager may select the smallest of the amounts specified in the preceding sentence, but is not required to do so.

(ii) For purposes of this Section 9.5, the term "***fair market value***" means the fair market value of the Call Units as of the date of the Call Exercise Notice, as determined by the Manager, taking into consideration such factors as the Manager deems appropriate. The phrase "***contrary to the interest of the LLC or a Series***" includes, but is not limited to, the following acts: (1) demanding cash or distributions not authorized by this agreement; (2) interfering with or attempting to improperly influence the Manager's exercise of its authority to manage the LLC, any Series, or any investment; or (3) making any statement to any Person concerning the Manager, the LLC, any Series, any investment made by a Series, or any other matter in connection with the foregoing which, if taken at face value by a theoretical potential investor would tend to dissuade such an investor from contributing capital to the LLC or a Series.

(iii) Upon the closing of any purchase consummated pursuant to the Call Right, the Call Seller will be deemed to represent and warrant to the LLC that (1) it has full right, title, and interest in and to the Call Units, (2) it has all the necessary power and authority and has taken all necessary action to sell the Call Units as contemplated by this Section 9.5, and (3) the Call Units are free and clear of any and all liens, pledges, security interests, options, rights of first offer, encumbrances, or other restrictions or limitations.

(c) **Closing.** The closing of the purchase of the Call Units pursuant to the Call Right (the "***Call Closing***") shall take place no later than thirty (30) days following the delivery of the Call Exercise Notice. The LLC shall give the Call Seller at least one (1) Business Days' written notice of the date of closing (the "***Call Right Closing Date***"). At the Call Closing on the Call Right Closing Date:

(i) The LLC shall pay the Call Purchase Price to the Call Seller by check, certified or official bank check, ACH, or by wire transfer of immediately available funds; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest of the LLC or a Series then the Call Purchase Price shall be payable to the Call Purchase Seller in one or more installments in accordance with a schedule to be established by the Manager, which schedule must provide that all installments will be due not more than twelve (12) months from the Call Right Closing Date.

(ii) The Call Seller shall deliver to the LLC a certificate or certificates (if any) representing the Call Units to be sold, accompanied by an assignment of any certificate or certificates to the LLC. If the Call Units are not certificated, the LLC shall transfer the Call Units on its own records.

(d) **Cooperation.** The Call Seller shall take all actions as may be reasonably necessary to consummate the sale contemplated by the Call Right, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate to consummate the sale.

ARTICLE X DISSOLUTION, TERMINATION, WINDING UP AND LIQUIDATING DISTRIBUTIONS

10.1 **Dissolution of the LLC.** The LLC shall dissolve only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The entry of a decree of judicial dissolution of the LLC or the administrative dissolution of the LLC under the Act.

10.2 **Termination of a Series.** Except as provided otherwise in a Series Agreement, a Series shall be terminated only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The dissolution of the LLC.
- (c) The entry of a decree of judicial termination of the Series under the Act.

The termination and winding up of a Series will not, in it of itself, cause a dissolution of the LLC or the termination of any other Series. The termination of a Series will not affect the limitation on liabilities of the Series or any other Series provided by this Agreement, the Series Agreements, the Certificate and the Act.

10.3 **Winding Up.** Upon the termination of a Series, the Manager, or, if there is no Manager, a liquidating trustee appointed by a majority in Interest of the Members associated with such Series, shall proceed to wind up the affairs of the Series, as the case may be, as provided in this Agreement, the Series Agreement and the Act. Upon the termination of a Series, an accounting shall be made by the Series' independent accountants of the accounts of the Series and of the Series' assets, liabilities and operations, from the date of the last previous accounting until the date of termination. The Manager (or the liquidating trustee) shall dispose of and convey the assets of the Series as promptly as reasonably possible following termination as is consistent with obtaining the fair market value for the assets of the Series. Until final distribution, the Manager (or the liquidating trustee) shall continue to operate the assets with all of the power and authority of the Manager. The costs of the liquidation shall be borne as an expense of the Series.

(a) **Liquidating Distributions.** A Series' assets and proceeds from the disposition of the Series' assets shall be distributed as specified on Exhibit A of the Series Agreement.

(b) To the extent a terminated Series is classified as a partnership for federal tax purposes, the Manager (or the liquidating trustee) shall use its reasonable efforts to comply with the timing requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(g) and make the distributions pursuant to Subsection (b) by the end of the taxable year in which the Series liquidates (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)) or, if later, within 90

days following such liquidation, but will not be bound to do so or liable in any way to any Person for failure to do so.

(c) Distributions pursuant to Section 10.4 and Exhibit A of the Series Agreement may be made to a trust established by the Members associated with such Series or the Series for the benefit of the Unitholders associated with such Series for the purposes of liquidating the Series' assets, collecting amounts owed to the Series, and paying liabilities or obligations of the Series. The assets of any such trust shall be distributed to the Unitholders from time to time, in the reasonable discretion of the trustee of the liquidating trust, in the same proportions as the amount distributed to such trust by the Series otherwise would have been distributed to the Unitholders pursuant to this Agreement.

10.4 No Deficit Restoration Obligation. Notwithstanding anything to the contrary in this Agreement, upon liquidation, if any Unitholder has a deficit Capital Account with respect to a Series (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Unitholder shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Unitholder's Capital Account, and the negative balance of such Unitholder's Capital Account shall not be considered a debt owed by such Unitholder to the LLC, to the Series or to any other Person for any purpose whatsoever.

ARTICLE XI BOOKS AND RECORDS; TAX MATTERS

11.1 Books and Records. The LLC shall keep adequate books and records, which shall set forth an accurate account of all transactions of each Series, including the Agreed Value of property contributed or to be contributed to the capital of the Series. The books and records, together with a copy of this Agreement, each Series Agreement and the Certificate will at all times be maintained at the principal place of business of the LLC and the applicable Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the records maintained for each Series must account for the assets associated with the Series separately from the other assets of the LLC or of any other Series. Upon reasonable written request, each Member associated with a Series or its designated representative will have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the books and records of the Series for any purpose reasonably related to the Member's interest with respect to the Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the Manager may, to the maximum extent permitted by applicable law, keep confidential and withhold from the Members associated with a Series any information or documents the disclosure or production of which the Manager believes, in his sole and absolute discretion, is not in the best interest of the LLC or the Series or is adverse to the interests of the LLC or the Series or which the LLC or the Manager is required by law or by an agreement with any Person to keep confidential or withhold. Such information or documentation may include, without limitation, the financial information to which Members may otherwise be entitled under Section 11.3 herein. The LLC and the Manager shall keep confidential each Member's name, address, email address, telephone number, investment amount, Subscription Agreement, and other personal data (the "**Member Confidential Information**"), and shall not disclose the Member Confidential Information to other Members. Pursuant to Section 18-305(g)

of the Act, the Members will only have such rights to obtain information relating to the LLC or its investments, or access to the books and records of the LLC and each Series, as expressly provided in this Agreement and only as the information pertains to an individual Member's own interest. Disclosure of Member Confidential Information in violation of this section will be deemed not to be in the best interest of the LLC or any Series.

11.2 Bank and Financial Accounts. The funds of a Series may be deposited in the name of the Series or in the name of the LLC as the Manager may determine in his sole discretion in such bank accounts or investment accounts as may be determined by the Manager and shall be withdrawn solely on the signature of those Persons authorized by the Manager as evidenced by written resolution. All funds and other assets of a Series will be accounted for as the property of the Series in the books and records of the LLC and the Series, irrespective of the name in which legal title to the assets of the Series is held.

11.3 Taxable Year; Accounting Methods; . To the extent a Series is not treated as disregarded as an entity separate from its owner for federal income tax purposes, the Series shall use the Fiscal Year as its taxable year. The Series shall report its income for income tax purposes using the method of accounting as may be selected from time to time by the Manager and permitted by law.

11.4 Tax Returns and Information. The Manager shall cause the preparation and the timely filing with necessary extensions of all applicable federal and applicable state tax returns of each Series. The tax information necessary to enable each Member to prepare its state, federal, local and foreign income tax returns shall be delivered to each Member within a reasonable period after the end of each Fiscal Year but generally not later than September 15th.

11.5 Tax Elections. Except as otherwise provided in this Agreement or a Series Agreement, the Manager shall cause each Series to make any and all elections for federal, state and local tax purposes including, without limitation, any election to adjust the basis of Series' assets pursuant to Code Sections 734(b), 743(b), 754 and 755 or comparable provisions of state or local law, in connection with transfers of Interests associated with a Series and distributions from a Series.

11.6 Tax Audits. With respect to any Series classified as a partnership for federal income tax purposes, for taxable years beginning before January 1, 2018 and to which the Revised Partnership Audit Procedures are not applicable, the Manager shall appoint a Member associated with a Series as the "*tax matters partner*" of such Series under Code § 6231(a)(7) and for taxable years to which the Revised Partnership Audit Procedures are applicable, the Manager shall appoint a Person to be or act as (in the Manager's sole discretion) the "*partnership representative*" of the Series under Code § 6223(a) (as amended by the Revised Partnership Audit Procedures) (the tax matters partner or partnership representative, as applicable, the "*Tax Matters Member*"). The Tax Matters Member of a Series shall represent the Series in all administrative and judicial proceedings involving federal, state or local income and other tax matters (collectively, "*tax matters*") as the Tax Matters Member. Subject to the first obtaining approval of a majority in Interest of the Members associated with the Series, the Tax Matters Member is authorized to contest or continue to contest any income tax deficiencies assessed or proposed to be assessed by any income taxing authority on such Series. Each Member associated with a Series shall cooperate with the Tax

Matters Member of such Series and do or refrain from doing any or all things reasonably requested by the Tax Matters Member with respect to the conduct of any examinations or proceedings involving tax matters. Each Series will indemnify and reimburse the Tax Matters Member for all expenses (including legal and accounting fees) incurred as Tax Matters Member pursuant to this Section, including (but not limited to) any expenses incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Series or the Members associated with such Series attributable to their Interests associated with such Series to the extent authorized by the Manager. The Members associated with a Series shall be kept informed of, and given an opportunity to participate in a non-binding manner in, all such tax matters of such Series which the Tax Matters Partner reasonably deems to be material. The Manager of a Series may remove any Member serving as the tax matters partner for such Series and appoint another Member to serve in that capacity or remove any Person serving as the partnership representative of such Series and appoint another Person to serve in that capacity at any time. If a Series pays an imputed underpayment pursuant to Code § 6223 (as amended by the Revised Partnership Audit Procedures), to the extent possible, the portion thereof attributable to a Unitholder may (within the discretion of the Manager) be treated as a withholding tax with respect to such Unitholder under Section 3.2. To the extent such portion of an imputed underpayment cannot be withheld from a current distribution, the Unitholder (or former Unitholder) shall be liable to the Series for the amount that cannot be so offset. The Series (in the discretion of the Manager) may elect the alternative set forth in Code § 6226 (as amended by the Revised Partnership Audit Procedures) instead of paying an imputed underpayment.

ARTICLE XII MISCELLANEOUS

12.1 **Notices.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the Person or to an officer of the Person to whom the same is directed, or sent by regular, registered or certified United States mail, or by facsimile transmission or by electronic mail or by private mail or courier service, addressed as follows: if to the LLC or a Series, to its principal office address, or to such other address as may be specified from time to time by notice to the Members; if to a Unitholder or Manager, to the address set forth on the Information Exhibit attached to the applicable Series Agreement, or to such other address as the Unitholder or Manager may specify from time to time by notice to the Unitholders or Manager. Any such notice shall be deemed to be delivered, given, and received for all purposes (i) as of the date of actual receipt if delivered personally or if sent by regular mail, facsimile transmission, electronic mail or by private mail or courier service, or (ii) two (2) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified United States mail, postage and charges prepaid, return receipt requested.

12.2 **Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legatees, legal representatives, successors, transferees, and assigns.

12.3 **Construction.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party to this Agreement. No provision of this Agreement is to be interpreted as a penalty upon, or a forfeiture

by, any party to this Agreement. The parties acknowledge that each party to this Agreement has shared equally in the drafting and construction of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party hereto than another.

12.4 Entire Agreement; No Oral Limited Liability Company Agreements or Series Agreements; Amendments to the Limited Liability Company Agreement or Series Agreements. This Agreement, the Series Agreements and the Subscription Agreements constitute the entire agreement among the parties with respect to the affairs of the LLC and any Series, and supersedes all prior agreements and understandings, whether oral or written. The LLC shall have no oral operating agreements and no Series shall have any oral Series Agreement. Except as otherwise provided in this Agreement, this Agreement and any Series Agreement may be amended only in writing by the Manager. Provided, however, that (i) no such Amendment by the Manager shall be effective to the extent that such amendment has a Material Adverse Effect upon one or more Members (Excepting Manager's broad authority as provided in Section 5.1 above) and (ii) no amendment of any provision of this Agreement shall, without the approval of the affected Member: (1) affect the limited liability of such Member; (2) increase such Member's obligation to make a Capital Contribution; or (3) amend this Section 12.4. For purposes of the preceding sentence, "**Material Adverse Effect**" shall mean any modification of the relative rights to distributions from a Series. Without limiting the generality of the foregoing: an amendment which has a proportionate effect on all Members (or in the case of a redemption of Interests or issuance of additional Interests, an amendment which has a proportionate effect on all Members immediately after such redemption or issuance) with respect to their rights to distributions shall be deemed to not have a Material Adverse Effect on any Member.

12.5 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the LLC or any Series.

12.6 Arbitration. ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY'S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC. NOTWITHSTANDING

ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A MEMBER'S RIGHTS TO INITIATE OR PURSUE ARBITRATION UNDER THIS AGREEMENT SHALL IMMEDIATELY TERMINATE UPON THE REMOVAL OF SUCH MEMBER FOR ANY REASON AS PROVIDED FOR UNDER SECTION 5.1. ONLY THOSE MEMBERS WHO HAVE PAID THE ENTIRETY OF THEIR REQUIRED INVESTMENT AMOUNTS UNDER THE APPLICABLE SUBSCRIPTION AGREEMENTS SHALL BE CONSIDERED MEMBERS FOR PURPOSES OF BEING ENTITLED TO INITIATE AN ARBITRATION. DISPUTES CONCERNING WHETHER A PARTY WHO INITIATES AN ARBITRATION HAS STANDING TO DO SO AS A MEMBER SHALL NOT BE DETERMINED BY THE ARBITRATOR BUT RATHER BY A COURT OF COMPETENT JURISDICTION.

12.7 **Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

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

12.9 **Additional Documents.** Each Member, upon the request of the LLC, agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

12.10 **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons indicated thereby may require.

12.11 **Governing Law; Consent to Jurisdiction.** The laws of the State of Delaware shall govern the validity of this Agreement, the construction and interpretation of its terms, and organization and internal affairs of the LLC and the limited liability of the Members. Each party to this Agreement hereby irrevocably consents to the personal jurisdiction of the state and federal courts sitting in the State of Delaware with respect to the enforcement of an arbitrator's ruling under Section 12.6 or emergency judicial relief.

12.12 **Waiver of Action for Partition.** Each of the Members irrevocably waives any right that it may have to maintain any action for partition with respect to any of the assets of the LLC.

12.13 **Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronic mail, and such facsimile or electronic mail execution shall have the full force and effect of an original signature. All fully executed counterparts hereof, whether original executions or facsimile executions or electronic mail executions or a combination, shall be construed together and shall constitute one and the same agreement.

12.14 **Power of Attorney.** Each Unitholder associated with a Series hereby irrevocably makes, constitutes and appoints the Manager associated with such Series, with full power of substitution, so long as the Manager is acting in such capacity (and any successor Manager thereof

so long as such Manager is acting in such capacity), its true and lawful attorney, in such Unitholder's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the LLC or such Series:

(a) all documents which the Manager deems necessary or desirable to effect the dissolution and termination of the LLC or such Series which dissolution and termination shall have been authorized in accordance with the terms of this Agreement;

(b) all such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the LLC or such Series shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the LLC or such Series; and

(c) all instruments, documents and certificates which the Manager deems necessary or desirable in connection with the conversion or reorganization of the LLC into another form of entity.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency or dissolution of each granting Unitholder and shall survive the delivery of any assignment by the Unitholder of the whole or any portion of its Interest. Each Unitholder associated with a Series hereby releases the Manager associated with such Series from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by the Manager pursuant to which the Manager purports to act as the attorney-in-fact for one or more Unitholders, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 12.14.

12.15 Title to Property. The title to all real or personal property (or interests therein) now or hereafter acquired by the LLC or any Series shall be held by and vested in the LLC or such Series, and not by or in any Member, individually.

12.16 Time of the Essence. Time is of the essence with respect to each and every term and provision of this Agreement.

12.17 Waivers. No consent or waiver, express or implied, by any party with respect to any breach or default in the performance by any other party of its obligations hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder, and any failure on the part of any party to complain regarding any act of any other party which constitutes a breach of such other party's obligations hereunder or to declare any such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

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

12.19 **Exhibits.** The Exhibits to this Agreement, each of which is incorporated by reference, are:

EXHIBIT A: Certificate of Formation

EXHIBIT B: The Series Agreements

EXHIBIT C: Glossary of Terms

EXHIBIT D: Regulatory Allocations

IN WITNESS WHEREOF, the Members, the Manager, and the LLC have executed this Agreement the day and year indicated on the following execution page, to be effective as of the Effective Date.

Execution page follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized on the date stated opposite that party's signature.

STELLAR, LLC

Date:

By:

David Engel
Managing Member

YIELD CAPITAL LLC

By: Stellar, LLC, its manager

Date:

By:

David Engel
Managing Member

-

Exhibit A
Certificate of Formation

See Attached

ELECTRONICALLY FILED - 2023 Aug 15 11:06 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301567

Exhibit B
The Series Agreements

See Attached

ELECTRONICALLY FILED - 2023 Aug 15 11:06 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2301567

Exhibit C Glossary of Terms

Many of the capitalized words and phrases used in this Agreement are defined below. Some defined terms used in this Agreement are applicable to only a particular Section of this Agreement or an Exhibit and are not listed below, but are defined in the Section or Exhibit in which they are used.

“**Act**” shall mean the Delaware Uniform Limited Liability Company Act, as in effect in Delaware and set forth at 6 Delaware Code, Chapter 18, Sections 18-101 through 18-1109 (or any corresponding provisions of succeeding law).

“**Adjusted Capital Account**” means, with respect to any Unitholder, such Person’s Capital Account (as defined below) as of the end of the relevant Fiscal Year increased by any amounts which such Person is obligated to restore, or is deemed to be obligated to restore pursuant to the next to last sentences of Treasury Regulations § 1.704-2(g)(1) (share of minimum gain) and 1.704-2(i)(5) (share of member nonrecourse debt minimum gain).

“**Affiliate**” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person directly or indirectly owning or controlling 10 percent or more of any class of outstanding equity interests of such Person or of any Person which such Person directly or indirectly owns or controls 10 percent or more of any class of equity interests, (iii) any officer, director, general partner or trustee of such Person, or any Person of which such Person is an officer, director, general partner or trustee, or (iv) any Person who is an officer, director, general partner, trustee or holder of 10 percent or more of the equity interests of any Person described in clauses (i) through (iii) of this sentence.

“**Agreed Value**” shall mean with respect to any noncash asset of a Series an amount determined and adjusted in accordance with the following provisions:

- (1) The initial Agreed Value of any noncash asset acquired by a Series other than by contribution by a Unitholder shall be its adjusted basis for federal income tax purposes.
- (2) The initial Agreed Value of any noncash asset contributed to the capital of a Series by any Unitholder shall be its gross fair market value on the date of its contribution, as agreed to by the contributing Unitholder and the Series.
- (3) The Agreed Value of any noncash asset distributed from a Series to any Unitholder shall be its gross fair market value, as determined by the Manager, as of the date the noncash asset is distributed.
- (4) Unless the Manager determines that making the adjustments under this paragraph (d) are not necessary to preserve the Unitholders’ economic interests in a Series, the Agreed Values of all noncash assets of a Series, regardless of how those assets were acquired, shall be adjusted from time to time to equal their gross fair market values, as determined by the Manager, as of the following times:

- (5) the acquisition of an Interest or an additional Interest associated with the Series by any new or existing Member in exchange for more than a de minimis Capital Contribution;
- (6) the distribution from the Series of more than a de minimis amount of money or other property as consideration for all or part of an Interest associated with such Series;
- (7) the liquidation of the Series within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g);
- (8) the grant of an Interest associated with the Series in the LLC (other than a de minimis Interest) as consideration for the provision of services to or for the benefit of the Series by an existing Unitholder acting in a “partner capacity” within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iii) or by a new Unitholder acting in a partner capacity or in anticipation of being a Unitholder; and
- (9) the issuance of a noncompensatory option (other than an option for a de minimis Interest) within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iv).
- (10) The Agreed Values of a Series’ noncash assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), except that Agreed Values of a Series’ noncash assets will not be adjusted under this paragraph (e) to the extent that an adjustment under paragraph (d) of this definition is made in connection with the transaction that would otherwise result in an adjustment under this definition.
- (11) If the Agreed Value of a noncash asset of a Series has been determined or adjusted pursuant to paragraph (b), (d) or (e) of this definition, such Agreed Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses (or items, if any of income, gain, expense, deduction, or loss of the Series to be allocated hereunder that are not included in the computation of Profits and Losses).

“**Agreement**” shall mean this Amended and Restated Limited Liability Company Agreement as amended from time to time.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in the City of New York are authorized or required to close.

“**Call Closing**” has the meaning stated in Section 9.5(c).

“**Call Closing Date**” has the meaning stated in Section 9.5(c)

“**Call Commencement Date**” has the meaning stated in Section 9.5(a).

“**Call Exercise Notice**” has the meaning stated in Section 9.5(b)(i).

“**Call Purchase Price**” has the meaning stated in Section 9.5(b)(i)

“**Call Right**” has the meaning stated in Section 9.5(a).

“**Call Seller**” has the meaning stated in Section 9.5(a).

“**Call Units**” has the meaning stated in Section 9.5(a).

“**Capital Account**” shall mean with respect to each Unitholder an account maintained and adjusted in accordance with the following provisions:

- (1) Each Person’s Capital Account with respect to a Series shall be increased by such Person’s Capital Contributions to such Series, such Person’s distributive share of Profits of the Series, any items in the nature of income or gain of the Series that are allocated pursuant to the Regulatory Allocations and the amount of any liabilities of the Series that are assumed by such Person or that are secured by Series property distributed to such Person.
- (2) Each Person’s Capital Account with respect to a Series shall be decreased by the amount of cash and the Agreed Value of any Series property distributed to such Person pursuant to any provision of this Agreement, such Person’s distributive share of Losses of the Series, any items in the nature of loss or deduction of the Series that are allocated pursuant to the Regulatory Allocations, and the amount of any liabilities of such Person that are assumed by the Series or that are secured by any property contributed by such Person to the Series.

If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

If the Agreed Values of a Series’ assets are adjusted pursuant to the definition of Agreed Value contained in this Agreement, the Capital Accounts of all Unitholders associated with such Series shall be adjusted simultaneously to reflect the aggregate adjustments as if the Series recognized gain or loss equal to the amount of such aggregate adjustment.

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

“**Capital Contribution**” shall mean with respect to any Member, the amount of money and the initial Agreed Value of any property (other than money) contributed to a Series with respect to the Interest of such Member associated with such Series.

“**Certificate**” shall mean the Certificate of Formation required to be filed by the LLC pursuant to the Act together with all amendments thereto, if any.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor federal revenue law.

“**Current Interest**” shall have the meaning set forth in Section 2.3.

“Default Rate” shall mean a per annum rate of return on a specified principal sum, compounded monthly, equal to the greater of (a) the Prime Rate plus 1,000 basis points, or (b) 18%, but in no event greater than the highest rate allowed by law.

“Depreciation” shall mean for each Fiscal Year of a Series or other period with respect to a particular asset of the Series, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to that asset for such Fiscal Year or other period, except that if, as of the beginning of such Fiscal Year or other period, the Agreed Value of the asset differs from its adjusted basis for federal income tax purposes, Depreciation for that asset will be an amount that bears the same ratio to its Agreed Value at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year or other period bears to its adjusted tax basis at the beginning of the Fiscal Year or other period; provided, however, that if the asset’s adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period is zero, Depreciation for that asset shall be determined with reference to its Agreed Value using any reasonable method selected by the Manager.

“Effective Date” shall have the meaning set forth in Section 1.1.

“Event of Bankruptcy” shall mean, with respect to any Person, the occurrence any of the events set forth in Section 18-304 of the Act.

“First Amended and Restated Agreement” shall have the meaning set forth in the recitals.

“Fiscal Year” shall mean, as of the Effective Date, the calendar year, and, with respect to the last year of the LLC or a Series, the portion of the calendar year ending with the date of its final liquidating distributions.

“Governmental Authority” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of law), or any arbitrator, court, or tribunal of competent jurisdiction.

“Highest Designated Interest” shall have the meaning set forth in Section 2.3.

“Interest” shall mean all of the rights of each Unitholder with respect to a Series established and created under this Agreement. A Unitholder association with more than one Series will have a separate Interest in each Series. With respect to any provision of this Agreement requiring the vote, approval, consent or similar action by the Members or a group of Members with respect to any matter, unless otherwise specified, reference to a majority (or a specified percentage) in Interest of the Members or group thereof means Members holding Units constituting a majority (or specified percentage) of the Units of the Members or group of Members, determined as the date of such vote, approval, consent or action unless an earlier record date has been established for determining the Members entitled to participate in such action, in which case the determination shall be made as of the earlier record date.

“Investment Return” shall mean with respect to a Unitholder that return from Series Investments as specified in the Series Agreement commencing on the date of such Unitholder's initial Capital Contribution and applying those conventions and otherwise computed as reasonably determined by the Manager.

“LLC” shall mean YIELD CAPITAL LLC, a Delaware limited liability company.

“Manager” shall refer to the Person designated as Manager on the execution page of this Agreement and its successor until such Person shall cease to be Manager as provided herein.

“Members” shall refer collectively to Persons who own Units associated with a Series and are listed on the Information Exhibit of any Series Agreement as Members and to any other Persons who own Units associated with a Series who are admitted to the LLC as Members until such Persons have ceased to own Units associated with a Series or otherwise have ceased to be Members under the terms of this Agreement. For the avoidance of doubt, a Person can cease to be a Member associated with a particular Series because such Person no longer owns Units associated with such Series or otherwise but continue to be a Member associated with another Series. ***“Member”*** means any one of the Members.

“Member Confidential Information” has the meaning stated in Section 11.1.

“Offering Member” has the meaning set forth in Section 8.5(a).

“Offer Notice” has the meaning set forth in Section 8.5(c)(i).

“Offered Units” has the meaning set forth in Section 8.5(a)

“Percentage Interest” shall mean with respect to the Unitholder the percentage set forth opposite each such Unitholder's name on the Information Exhibit of any Series Agreement in the column labeled ***“Percentage Interest.”*** A Unitholder's Percentage Interest associated with a Series shall be a percentage equal to a fraction the numerator of which shall be the number of Units associated with such Series held by such Unitholder and the denominator of which shall be the total number of Units associated with such Series held by all Unitholders.

“Person” shall mean any natural person, partnership, trust, estate, association, limited liability company, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative capacity.

“Prime Rate” as of a particular date shall mean the prime rate of interest as published on that date in the Wall Street Journal, and generally defined therein as ***“the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.”*** If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal was published.

“Profits” and ***“Losses”*** shall mean with respect to a Series, for each Fiscal Year or other period of such Series, an amount equal to the Series' taxable income or loss for such year or period, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss or

deduction required to be stated separately pursuant to Code § 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

- (1) Any income of the Series that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;
- (2) Any expenditures of the Series described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;
- (3) If the Agreed Value of any asset of the Series is adjusted under paragraphs (c) or (d) of the definition of “**Agreed Value**,” then for purposes of computing Profits and Losses for the Fiscal Year of such adjustment, the amount of that adjustment will be taken into account as income, gain, loss or deduction, as the case may be, as if the asset had been sold for an amount equal to its adjusted Agreed Value as provided by Treasury Regulations § 1.704-1(b)(2)(iv)(f)(2);
- (4) Gain or loss recognized for federal income tax purposes from the disposition of assets of the Series shall be computed by reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;
- (5) Depreciation shall be used in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the Series’ taxable income or loss;
- (6) To the extent that Treasury Regulations § 1.704-1(b)(2)(iv)(m)(4) requires an adjustment made to the adjusted tax basis of any of the Series’ assets pursuant to Code § 734(b) to be taken into account in determining Capital Account balances as a result of a distribution made other than in liquidation of a Unitholder’s Interest, the amount of such adjustment shall be treated as a taxable gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Profits and Losses; and
- (7) Notwithstanding any other provision of this definition, no items of income, gain, expense, deduction or loss that are specifically allocated under the Regulatory Allocations Exhibit are to be taken into account in computing Profits or Losses, but the amounts of those items are to be determined by applying rules comparable to those provided in paragraphs (a) through (f) of this definition.

“**Regulatory Allocations**” shall mean those allocations of items of income, gain, loss or deduction of a Series set forth on the Regulatory Allocations Exhibit and designed to enable the Series to comply with the alternate test for economic effect prescribed in Treasury Regulations § 1.704-1(b)(2)(ii)(d), and the safe harbor rules for allocations attributable to nonrecourse liabilities prescribed in Treasury Regulations § 1.704-2.

“**Related Party**” shall mean (a) with respect to any individual, such individual’s spouse, any descendants (whether natural, adopted or in the process of adoption), any sibling, any ancestor, any trust more than fifty percent (50%) of the beneficial interests in which are owned by such

individuals or any of them, and any corporation, association, partnership or limited liability company more than fifty percent (50%) of the equity interests in which are owned by those above described individuals or trusts, (b) with respect to any trust, the owners of the beneficial interests of such trust, and (c) with respect to any corporation, association, partnership or limited liability company, the owners of more than fifty percent (50%) of the outstanding equity interests in such entity.

“Revised Partnership Audit Procedures” means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114 74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof) or any similar procedures established by a state, local, or non-U.S. taxing authority.

“ROFR Exercise Notice” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Option Period” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Rightholders” has the meaning given that term in Section 8.5(a).

“Series Agreement” shall mean the agreement establishing a Series hereunder and described therein and entered into by the Members associated with such Series.

“Series Investment” shall have the meaning set forth in Section 1.4.

“Series” shall mean a designated series of limited liability company interests in the LLC established in accordance with this Agreement and pursuant to Section 18-215 of the Act having separate rights, powers and/or duties with respect to specified obligations.

“Subscription Agreements” shall mean each of the several Subscription Agreements between the LLC and the Members who have signed Subscription Agreements.

“Transfer” shall mean any sale, assignment, transfer, conveyance, pledge, hypothecation or other disposition, voluntarily or involuntarily, by operation of law, with or without consideration or otherwise (including, without limitation, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Interest.

“Treasury Regulations” shall mean the final and temporary Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Unitholder” shall mean a Person holding Units.

“Units” represent the basis on which Interests are denominated and the basis on which the relative rights, privileges, preferences and obligations are determined under this Agreement and the Act, and the total number and class of Units associated with a Series attributed to each Unitholder shall be the number recorded on the Information Exhibit of the Series Agreement as of the relevant time.

“Unit Equivalents” means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable, or exercisable for Units, and any option, warrant, or other right to subscribe for, purchase, or acquire Units.

“Unpaid Investment Return” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the cumulative Investment Return of such Unitholder as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.1 and Section 3.2 as of such date. If any Interest represented is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unpaid Investment Return of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

“Unreturned Capital” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the aggregate Capital Contributions of such Person with respect to such Person’s Interest as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.3 as of such date. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unreturned Capital of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

Exhibit D

Regulatory Allocations

This Exhibit contains special rules for the allocation of items of income, gain, loss and deduction of a Series that is classified as a partnership for federal income tax purposes that override the basic allocations of Profits and Losses in Section 4.1 of the Agreement and any allocations of Profits and Losses contained in any Series Agreement to the extent necessary to cause the overall allocations of items of income, gain, loss and deduction of a Series to have substantial economic effect pursuant to Treasury Regulations § 1.704-1(b) and shall be interpreted in light of that purpose. Subsection (a) below contains special technical definitions. Subsections (b) through (h) contain the Regulatory Allocations themselves. Subsections (i), (j) and (k) are special rules applicable in applying the Regulatory Allocations.

(a) **Definitions Applicable to Regulatory Allocations.** For purposes of the Agreement, with respect to each Series, the following terms shall have the meanings indicated:

“LLC Minimum Gain” has the meaning of **“partnership minimum gain”** set forth in Treasury Regulations § 1.704-2(d), and is generally the aggregate gain a Series would realize if it disposed of its property subject to Nonrecourse Liabilities in full satisfaction of each such liability, with such other modifications as provided in Treasury Regulations § 1.704-2(d). In the case of Nonrecourse Liabilities for which the creditor’s recourse is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of a Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Member Nonrecourse Deductions” shall mean losses, deductions or Code § 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt under the general principles applicable to **“partner nonrecourse deductions”** set forth in Treasury Regulations § 1.704-2(i)(2).

“Member Nonrecourse Debt” means any Series liability with respect to which one or more but not all of the Unitholders associated with such Series or related Persons to one or more but not all of such Unitholders bears the economic risk of loss within the meaning of Treasury Regulations § 1.752-2 as a guarantor, lender or otherwise.

“Member Nonrecourse Debt Minimum Gain” shall mean the minimum gain attributable to Member Nonrecourse Debt as determined pursuant to Treasury Regulations § 1.704-2(i)(3). In the case of Member Nonrecourse Debt for which the creditor’s recourse against the Series is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of the Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Nonrecourse Deductions” shall mean losses, deductions, or Code § 705(a)(2)(B) expenditures attributable to Nonrecourse Liabilities (see Treasury Regulations § 1.704-2(b)(1)). The amount of Nonrecourse Deductions for a Fiscal Year shall be determined pursuant to Treasury Regulations § 1.704-2(c), and shall generally equal the net increase, if any, in the amount of LLC Minimum Gain for that taxable year, determined generally according to the provisions of Treasury Regulations §

1.704-2(d), reduced (but not below zero) by the aggregate distributions during the year of proceeds of Nonrecourse Liabilities that are allocable to an increase in LLC Minimum Gain, with such other modifications as provided in Treasury Regulations § 1.704-2(c).

“Nonrecourse Liability” means any liability of a Series (or portion thereof) for which no Unitholder associated with such Series bears the economic risk of loss under Treasury Regulations § 1.752-2.

“Regulatory Allocations” shall mean allocations of Nonrecourse Deductions provided in Paragraph (b) below, allocations of Member Nonrecourse Deductions provided in Paragraph (c) below, the minimum gain chargeback provided in Paragraph (d) below, the member nonrecourse debt minimum gain chargeback provided in Paragraph (e) below, the qualified income offset provided in Paragraph (f) below, the gross income allocation provided in Paragraph (g) below, and the curative allocations provided in Paragraph (h) below.

(b) **Nonrecourse Deductions.** All Nonrecourse Deductions of a Series for any Fiscal Year shall be allocated to the Unitholders associated with such Series in accordance with their Percentage Interests.

(c) **Member Nonrecourse Deductions.** All Member Nonrecourse Deductions for any Fiscal Year shall be allocated to the Unitholder who bears the economic risk of loss under Treasury Regulations § 1.752-2 with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

(d) **Minimum Gain Chargeback.** If there is a net decrease in LLC Minimum Gain for a Fiscal Year with respect to a Series, each Unitholder associated with such Series shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of such net decrease in LLC Minimum Gain, determined in accordance with Treasury Regulations § 1.704-2(g)(2) and the definition of LLC Minimum Gain set forth above. This provision is intended to comply with the minimum gain chargeback requirement in Treasury Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

(e) **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt for any Fiscal Year, each Unitholder who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt as of the beginning of the Fiscal Year, determined in accordance with Treasury Regulations § 1.704-2(i)(5), shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations §§ 1.704-2(i)(4) and (5) and the definition of Member Nonrecourse Debt Minimum Gain set forth above. This Paragraph is intended to comply with the member nonrecourse debt minimum gain chargeback requirement in Treasury Regulations § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(f) **Reallocation of Losses.** Section 4.1 notwithstanding, if and to the extent that any allocation of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) of a Series to any Unitholder associated with such Series would cause a deficit in such Unitholder's Adjusted Capital Account associated with such Series or would further reduce an existing balance that is already negative, then such Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) shall be allocated to the other Unitholders associated with such Series for whom the limitation described in this Paragraph does not apply in proportion to the amounts of Losses (or items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) that otherwise would be allocated among them for that Fiscal Year. In the event that any special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) are made pursuant to this paragraph, items of gross income of the Series and gain from subsequent periods shall be specially allocated to offset, to the extent feasible and as promptly as possible, such special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses).

(g) **Qualified Income Offset.** In the event any Unitholder unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of income and gain of a Series (consisting of a pro rata portion of each item of income, including gross income, and gain of such Series for such year) shall be allocated to such Unitholder in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit in such Unitholder's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible.

(h) **Gross Income Allocation.** In the event any Unitholder has a deficit in its Adjusted Capital Account with respect to a Series at the end of any Fiscal Year, each such Unitholder shall be allocated items of gross income and gain of such Series, in the amount of such Adjusted Capital Account deficit, as quickly as possible.

(i) **Curative Allocations.** When allocating Profits and Losses under Section 4.1, such allocations shall be made so as to offset any prior allocations of gross income under Paragraph (h) above to the greatest extent possible so that overall allocations of Profits and Losses shall be made as if no such allocations of gross income occurred.

(j) **Ordering.** The allocations in this Exhibit to the extent they apply shall be made before the allocations of Profits and Losses under Section 4.1 and in the order in which they appear above.

(k) **Waiver of Minimum Gain Chargeback Provisions.** If the Manager determines that (i) either of the two minimum gain chargeback provisions contained in this Exhibit would cause a distortion in the economic arrangement among the Members, (ii) it is not expected that a Series will have sufficient other items of income and gain to correct that distortion, and (iii) the Members associated with such Series have made Capital Contributions or received net income allocations that have restored any previous Nonrecourse Deductions or Member Nonrecourse Deductions, the Manager shall have the authority, but not the obligation, after giving notice to the Members, to request on behalf of the Series the Internal Revenue Service to waive the minimum

gain chargeback or member nonrecourse debt minimum gain chargeback requirements pursuant to Treasury Regulations §§ 1.704-2(f)(4) and 1.704-2(i)(4). The Series shall pay the expenses (including attorneys' fees) incurred to apply for the waiver. The Manager shall promptly copy all Members on all correspondence to and from the Internal Revenue Service concerning the requested waiver.

(l) **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any asset of a Series pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Unitholders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

OF

YIELD CAPITAL LLC

A DELAWARE LIMITED LIABILITY COMPANY**

The limited liability company interests represented by this limited liability company agreement have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or under the securities acts or laws of any state or territory in reliance upon exemptions from registration under those acts. By acquiring interests represented by this limited liability company agreement, each member represents that it will not sell or otherwise dispose of its interests without compliance with the provisions of this limited liability company agreement and registration or other compliance with the aforesaid acts and the rules and regulations promulgated thereunder.

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**SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT
OF
YIELD CAPITAL LLC
A DELAWARE LIMITED LIABILITY COMPANY**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT is made and entered into by and among Yield Capital LLC, the Manager, and the Persons and Members whose Capital Contributions are listed on the Information Exhibit annexed to the Series Agreements attached as Exhibit B (whose Member Confidential Information may be redacted pursuant to Section 11.1). Unless otherwise indicated, capitalized words and phrases in this Amended and Restated Limited Liability Company Agreement shall have the meanings set forth in the Glossary of Terms attached as Exhibit C hereto.

Recitals

- A. WHEREAS, the LLC was formed under the laws of the State of Delaware by the filing of the Certificate with the Secretary of the State of Delaware on August 30, 2019;
- B. WHEREAS, the LLC, the Members, and the Manager entered into a Limited Liability Company Agreement of Yield Capital LLC, as later amended and restated by the Manager pursuant to Section 12.4 thereof (the “*First Amended and Restated Agreement*”);
- C. WHEREAS, Section 12.4 of the First Amended and Restated Agreement provides that it “may be amended only in writing by the Manager”;
- D. WHEREAS, the Manager wants to amend and restate the First Amended and Restated Company Agreement in its entirety as set forth herein for the purposes of, and on the terms and conditions set forth in, this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
FORMATION**

1.1 **Formation; General Terms; Effective Date.** The LLC was formed on August 30, 2019 upon the filing of the Certificate with the Delaware Secretary of State. A copy of the Certificate is attached hereto as Exhibit A.

(a) The rights and obligations of the Members and the terms and conditions of the LLC shall be governed by the Act and this Agreement, including all the Exhibits to this Agreement. Unless otherwise required by law, if and to the extent the Act and this Agreement are inconsistent with respect to any subject matter covered in this Agreement, this Agreement shall govern. Unless otherwise required by law, if and to the extent this Agreement and a Series Agreement are inconsistent with respect to any subject matter covered in this Agreement, the

Series Agreement shall govern. This Agreement shall be effective as of the date executed below by the Manager (the “**Effective Date**”).

(b) The Manager shall execute and file on behalf of the LLC all other instruments or documents, and shall do or cause to be done all such filing, recording, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the continuation and operation of a limited liability company in Delaware and in the other jurisdictions in which the LLC shall transact business.

1.2 **Name.** The name of the LLC shall be YIELD CAPITAL LLC. The business of each Series shall be conducted under the name of the Series and not under the name of the LLC generally. The Manager may amend the Certificate or any Series Agreement at any time to change the name of the LLC or Series, as the case may be. The Manager shall provide each Member with notice of any name change of the LLC and each Member associated with a Series with notice of any name change of the Series.

1.3 **Principal Office.** The principal office of the LLC and each Series shall be 16192 Coastal Hwy Lewes Delaware 19958 or such other place as the Manager may designate from time to time.

1.4 **Purpose.** The LLC shall not own any assets other than assets associated with one or more Series or cash being held on behalf of a Person in anticipation of such Person purchasing Interests in future Series to be established by the LLC nor shall the LLC have Unitholders with economic interests in the LLC apart from their interest in one or more Series. The purpose of the LLC shall be to establish Series and the purpose of each Series shall be (i) to raise capital to make debt and equity investments (a “**Series Investment**”) from time to time in companies, real estate, equipment, and ancillary businesses and investments related to or operating in the legal medical and recreational marijuana industry; (ii) to own, hold, maintain, encumber, lease, sell, transfer or otherwise dispose of all property or assets or interests in property or assets as may be necessary, appropriate or convenient to accomplish the activities described in clause (i) above; (iii) to incur indebtedness or obligations in furtherance of the activities described in clauses (i) and (ii) above; and (iv) to conduct such other activities as may be necessary or incidental to the foregoing, all on the terms and conditions and subject to the limitations set forth in this Agreement.

1.5 **Registered Agent; Registered Office.** The LLC’s registered agent and registered office are set forth in the Certificate, and may be changed from time to time by the Manager, in which case the Manager shall file any documentation required by the Act.

1.6 **Commencement and Term.** The LLC commenced at the time and on the date appearing in the Certificate and shall continue in existence until it is dissolved, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement. Except as otherwise provided in a Series Agreement, a Series will commence upon its establishment hereunder and shall continue in existence until it is terminated, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement.

1.7 **Tax Classification.** The parties acknowledge that because the LLC owns no assets other than assets associated with a Series and all of the Unitholders are associated with one or more

Series and have no economic interest in the LLC apart from their interest in one or more Series, the LLC will be treated as owning no assets and having no economic owners for federal income tax purposes. The parties further acknowledge that each Series that has more than one Unitholder associated with it shall be classified as a partnership for federal income tax purposes and that each Series that has only one Unitholder associated with it shall be disregarded as an entity separate from its owner for federal income tax purposes in each instance until the effective date of any election such Series may make to change its classification for federal income tax purposes to that of a corporation. It is agreed that the Manager shall have authority, on behalf of each Series and each Unitholder, to file and make such election to change the tax classification of a Series from a partnership or a disregarded entity to a corporation at such time as the Manager determines that such a change is in the best interests of the Series.

1.8 Establishment of Series.

(a) **Establishment of Series; Series Agreement.** The LLC may establish separate Series from time to time, as contemplated by Section 18-215 of the Act. The establishment and designation of any Series shall be effective upon the issuance of Interests associated with such Series and the execution by the applicable parties thereto of a Series Agreement setting forth such establishment and designation. The terms of each Series will be generally set forth in this Agreement and as specifically set forth in the applicable Series Agreement. For all purposes of the Act, this Agreement together with each Series Agreement entered into from time to time constitute the “limited liability company agreement” of the LLC within the meaning of the Act. Notwithstanding any other provision of this Agreement, the terms and provisions of any Series Agreement may not otherwise alter or amend any other terms and provisions of this Agreement or of any other Series Agreement. At any time that there are no Interests outstanding of any particular Series previously established and designated, the LLC may abolish that Series and the establishment and designation thereof. Without limiting the authority of the LLC to establish and designate further Series, the LLC hereby establishes and designates Series with each Series Agreement. Each time the LLC establishes and designates a new Series, the Series Agreement for that particular Series will be attached as Exhibit B to this Agreement.

(b) **Series Separateness.** Each Series will have (i) separate rights, powers, duties and management from each other Series, and (ii) exclusive rights with respect to the property, obligations, profits, and losses associated with the Series and all proceeds derived therefrom. No debt, liability, obligation or expense of a Series will be a debt, liability, obligation or expense of any other Series. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a Series will be enforceable against the assets of the Series only and not against any other assets of the LLC generally or any other Series, and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally, or any other Series will be enforceable against the assets of the Series. The records maintained for each Series will account for the assets associated with the Series separately from the other assets of the LLC, or any other Series, and assets associated with a Series may be held, directly or indirectly, including in the name of the Series, in the name of the LLC or otherwise. Notwithstanding the foregoing, any assets or liabilities of the LLC used by (or in connection with the activities of) more than one Series will be allocated to each Series by the Manager in accordance with any reasonable method determined by the Manager. Records maintained for a Series that reasonably identify its assets, including by specific listing, category,

type, quantity, computational or allocation formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of the assets is objectively determinable, will be deemed to account for the assets associated with the Series separately from the other assets of the LLC or any other Series. No assets of one Series may be commingled with the assets of any other Series or the assets, if any, of the LLC, generally.

(c) **Interests in a Series.** The Interests of each Series shall be separate and distinct from the Interests in any other Series. Upon admission to the LLC, each Member will be designated as a Member of a particular Series. A Member may be a member of more than one Series. Each Member shall have the rights, duties and powers as herein provided with respect to each Series of which it is a member. No Member shall have any interest in or rights with respect to any Series in which it does not hold an Interest. No Member shall have any right to vote on any matter pertaining to a particular Series, or with respect to the LLC generally, except as herein expressly provided. The Information Exhibit attached to the Series Agreement of each Series will be updated from time to time as is necessary to accurately reflect the information contained therein, including, without limitation, the admission of additional Members associated with the Series. In the event a Unitholder no longer has any Unpaid Investment Return and Unreturned Capital with respect to a particular Series, then such Unitholder's Units associated with such Series shall automatically terminate.

(d) **General Applicability.** The provisions of this Agreement which are generally applicable to the LLC, any Manager, and any Member or Unitholder, including, but not limited to, provisions regarding distributions, management, Interests and dissolution and termination shall be applicable to any Series, unless expressly provided otherwise.

ARTICLE II

CAPITAL CONTRIBUTIONS; ISSUANCE OF INTERESTS; CAPITAL ACCOUNTS

2.1 **Capital Contributions.** The Members associated with a Series shall make Capital Contributions to the Series when and as required by the Series Agreement of the Series. No Member shall be obligated to make additional capital contributions after their initial contribution unless specifically required by the Series Agreement.

2.2 **Maintenance of Capital Accounts; Withdrawals; Interest.** Individual Capital Accounts with respect to a Series shall be maintained for each of the Unitholders associated with such Series. No Unitholder shall be entitled to withdraw any part of its Capital Account or to receive any distribution except as provided in this Agreement or the applicable Series Agreement. No Unitholder shall be entitled to receive any interest on its Capital Contributions or with respect to its Capital Account. Each Unitholder shall look solely to the assets of the applicable Series for the return of its Capital Contributions and, except as otherwise provided in this Agreement or the applicable Series Agreement, shall have no right or power to demand or receive property other than cash from the applicable Series. No Unitholder associated with a Series shall have priority over any other Unitholder associated with the same Series as to the return of its Capital Contributions, distributions or allocations, except as provided in this Agreement or the applicable Series Agreement.

2.3 Issuance of Units; Designating Interests; Current Interests. In exchange for its Capital Contribution each Member shall receive an Interest. Each Member's Interest shall be associated with a Series and denominated in Units, and the relative rights, privileges, preferences and obligations with respect to the Member's Interest shall be determined under this Agreement and the Act and the applicable Series Agreement based upon the number of Units held by the Member with respect to the Member's Interest. In addition, upon investing in the LLC and acquiring an Interest associated with a Series, each Member shall receive his Investment Return, if any, on a quarterly or annual basis.

ARTICLE III DISTRIBUTIONS

3.1 Current Distribution of Investment Return. Prior to the termination of a Series, except as otherwise provided in the Series Agreement for such Series, cash shall be distributed from such Series to each Unitholder associated with such Series. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.2 Distribution of Investment Return Upon Return of Capital. Except as otherwise provided in a Series Agreement, when a Unitholder associated with a Series receives a distribution from such Series that reduces such Unitholder's Unreturned Capital with respect to such Series to zero, at such time cash shall also be distributed from such Series to the extent of such Unitholder's Unpaid Investment Return. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.3 Return of Capital Distributions. Except as otherwise provided in a Series Agreement, upon the repayment of a Series Investment, the principal portion of such repayment proceeds shall be distributed from such Series to the Unitholders in proportion to their Series Investment to the extent of each such Unitholder's Unreturned Capital and until all such repayment proceeds have been distributed. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.4 Tax Withholding. In the event any federal, foreign, state or local jurisdiction requires the LLC or any Series to withhold taxes or other amounts with respect to any Unitholder's allocable share of Profits, taxable income or any portion thereof, or with respect to distributions, the LLC or such Series shall withhold from distributions or other amounts then due to such Unitholder an amount necessary to satisfy the withholding responsibility. In such a case, the Unitholder for whom the LLC or Series has paid the withholding tax shall be deemed to have received the withheld distribution or other amount due and to have paid the withholding tax directly. Consequently, distributions to be made to a Unitholder pursuant to Sections 3.1, 3.2 or 3.3 will be reduced by any withholding made pursuant to this Section 3.4.

If it is anticipated that at the due date of the LLC's or Series' withholding obligation the Unitholder's share of cash distributions or other amounts due is less than the amount of the withholding obligation, the Unitholder with respect to which the withholding obligation applies shall pay to the LLC or the Series, as the case may be, the amount of such shortfall within ten (10) days after notice by the LLC or Series. In the event a Unitholder fails to make the required payment

when due hereunder, and the LLC or Series nevertheless pays the withholding, in addition to the LLC's or Series', as the case may be, remedies for breach of this Agreement, the amount paid shall be deemed a recourse loan from the LLC or Series to such Unitholder bearing interest at the Default Rate, and the LLC or Series shall apply all distributions (interim or liquidating) or payments that would otherwise be made to such Unitholder toward payment of the loan and interest, which payments or distributions shall be applied first to interest and then to principal until the loan is repaid in full.

3.5 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions (interim or liquidating) are subject to set-off by the LLC or Series for any past-due obligation of a Unitholder to the LLC or Series, respectively.

ARTICLE IV ALLOCATIONS

4.1 Profits and Losses. Except as otherwise provided in this Agreement or Series Agreement, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of a Series for each Fiscal Year shall be allocated among the Unitholders associated with such Series in a manner as the Manager in the exercise of his good faith discretion determines such that, after giving effect to the Regulatory Allocations Exhibit attached as Exhibit D hereto, the Capital Account of each Unitholder, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the distributions that would be made to such Unitholder pursuant to Section 10.4 if the Series were terminated, its affairs wound up and its assets were distributed to the Unitholders associated with such Series in accordance in accordance with Section 10.4.

4.2 Code Section 704(c) Tax Allocations. Income, gain, loss, and deduction with respect to any property contributed to the capital of a Series shall, solely for tax purposes, be allocated among the Unitholders associated with such Series so as to take account of any variation between the adjusted basis of such property to the Series for federal income tax purposes and its initial Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

If the Agreed Value of any Series asset is adjusted after its contribution to the Series, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

Any elections or other decisions relating to allocations under this Section shall be determined by the Manager of the Series. Absent a determination by the Manager, the remedial allocation method under Treasury Regulation § 1.704-3(d) shall be used. Allocations pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not be taken into account in computing any Unitholder's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

4.3 Miscellaneous.

(a) **Allocations Attributable to Particular Periods.** For purposes of determining Profits, Losses or any other items allocable to any period, such items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code § 706 and the Treasury Regulations thereunder. Absent such a determination, such items shall be determined on a daily basis.

(b) **Other Items.** Except as otherwise provided in this Agreement, all items of income, gain, loss, deduction, credit and any other allocations not otherwise provided for of a Series shall be divided among the Unitholders in the same proportion as they share Profits or Losses, as the case may be, for the year for such Series.

(c) **Tax Consequences; Consistent Reporting.** The Unitholders are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by those allocations as reflected on the information returns of a Series in reporting their shares of Series income and loss for income tax purposes. Each Unitholder agrees to report its distributive share of Series items of income, gain, loss, deduction and credit on its separate return in a manner consistent with the reporting of such items to it by the Series. Any Unitholder failing to report consistently, and who notifies the Internal Revenue Service of the inconsistency as required by law, shall reimburse the Series for any legal and accounting fees incurred by the Series in connection with any examination of the Series by federal or state taxing authorities with respect to the year for which the Unitholder failed to report consistently.

ARTICLE V MANAGEMENT; DUTIES

5.1 Management by the Manager; Limitations on Actual Authority; Title; Delegation of Authority; Compensation.

(a) **General Authority of the Manager.** The Manager in its sole and absolute discretion shall have complete authority and exclusive control to conduct any business on behalf of the LLC and any Series without the consent of any Member, and without a vote of any Member or Members, which authority may be delegated in part as provided in Subsection (d) of this Section. No Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series. It is the express intention of this Agreement to give the Manager of the LLC and the Manager of each Series the broadest authority possible under Delaware Law. For the avoidance of doubt and without limitation, the Manager may do any of the following without the consent of any Member of a Series:

- (i) Admit new Members
- (ii) Raise additional capital by debt at any interest rate or terms, and equity or debt/equity hybrid at any valuation or terms even if such additional capital dilutes or significantly dilutes existing Members.

(iii) The Manager may issue warrants, options, and other financial instruments to secure capital investment, or incentivize key employees for performance, even if such issuance dilutes or significantly dilutes existing Members.

(iv) Call the Interest of any Member in accordance with Section 9.5.

(v) Sell, merge, exchange, transfer, swap, enter into a reverse takeover, IPO, and SPAC (Special Purpose Acquisition Company) transaction. The Manager or Principals of the Manager or its affiliates may sponsor a SPAC and include the all or part of the assets of a Series in a SPAC transaction, and may concurrently be a Sponsor of the SPAC. Furthermore, the Manager may transfer, sell, merge, exchange, swap, borrow against all the assets of a Series without approval of Members of any Series.

(b) Each Subscriber authorizes and grants Manager full and absolute authority to execute all legal documents and contracts to consummate a roll-up transaction with other Series and related investments, if in the sole and absolute opinion of Manager that a roll-up transaction will benefit the Members of all Series. In the case of a roll-up, an independent third-party valuation, acquirer allocation of purchase price (e.g., SPAC), or investment banker or similar valuation of the relative value of each Series or related investment will be completed/conducted on each entity in the roll-up to determine each Series's percentage ownership vis-à-vis other rolled up Series and other investments managed by Manager.

(c) **Right to Rely on Action of Any Manager; Manager's Liability for Unauthorized Acts.** Persons dealing with the LLC or any Series shall have no duty to inquire whether the act of any Manager in carrying on in the usual way the business of the LLC or any Series is pursuant to the Manager's actual authority under this Agreement, and such acts shall be binding upon the LLC and such Series regardless of whether such Manager had actual authority, unless the Person dealing with such Manager had actual knowledge that the Manager was exceeding his authority.

(d) **Manager's Titles.** The Manager may use the title "Manager" or such other title or titles as determined by the Manager.

(e) **Delegation of Authority.** The Manager may, but shall not be required to, delegate by written resolutions, which resolutions may be general or may be limited to specific matters, to one Person, several Persons or a committee of Persons (with such titles as the Manager shall select) any powers or authority granted to the Manager pursuant to this Agreement or pursuant to the Act. Delegation of any powers pursuant to this Subsection shall not of itself create an employment agreement or any other contract right. The Manager may withdraw any powers delegated pursuant to this Subsection at any time and from time to time with or without cause. The delegation of authority by the Manager pursuant to this Subsection shall not relieve the Manager from the duties and responsibilities set forth in the Act or in this Agreement.

(f) **Compensation; Reimbursement of Expenses.** The Manager shall receive compensation and Performance Fees for its services as Manager as specified in the Series Agreement and all agreements between the Series, the Manager, and the companies in which the Series invest. The LLC or a Series may reimburse any Manager for all reasonable expenses

incurred by such Persons in managing and conducting the LLC's or Series' business, including (but not limited to) overhead, administrative and travel expenses.

5.2 Number, Designation, Election and Removal of Managers.

(a) **Number, Designation, Execution of Agreement.** The LLC shall have one (1) Manager, who may but need not be a Member and who shall also serve as the Manager of each Series unless the Series Agreement of a particular Series provides otherwise. Stellar, LLC ("Stellar"), a Wyoming limited liability company, is the Manager of the LLC as of the Effective Date. Each Manager shall execute and be bound by the provisions of this Agreement and any applicable Series Agreement and shall serve until its death, resignation or removal. For the avoidance of doubt, if at any time Stellar ceases to serve as the Manager for a Series, then any reference to the Manager with respect to such Series shall refer to the then acting Manager. The Manager of the LLC and the Manager of each series may only be removed by unanimous consent of the Members and the Manager. The removal or resignation of a Manager, shall not affect the Manager's rights to receive Performance and other fees associated with a Series or subsequent Performance Fees resulting from a Sale, merger, exchange, transfer, swap, reverse takeover, SPAC (Special Purpose Acquisition Company) transaction, or IPO (initial public offering).

(b) **Resignation.** A Manager may resign as the Manager of a Series at any time upon giving written notice to the Members associated with such Series. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

(c) **Vacancies.** If a Manager ceases to be a Manager of a Series, the remaining Managers of such Series, if any, shall have authority to designate another Person to fill the vacancy, subject to the right of the Members associated with such Series to designate Managers as provided in Subsection (b) of this Section. If there are no remaining Managers of such Series, the Members associated with such Series may designate a new Manager(s) according to the voting procedure described in Subsection (b) of this Section. A vacancy created by an increase in the authorized number of Managers of a Series shall be filled only by the Members associated with such Series.

5.3 Ascertaining the Actions of the Manager. The requisite vote, consent, approval or ratification of the Manager with respect to any matter may be evidenced in writing signed by the Manager or may be ascertained and evidenced in any other formal or informal matter. The proceedings and deliberations of the Manager need not be in writing. If at any time there is more than one Manager of a Series, the Managers may establish procedures for holding meetings of the Managers of such Series, taking Manager action and evidencing the Manager action taken, which procedures may include notice requirements, and shall be binding on the Members associated with such Series and Managers of such Series to the extent specified in such procedures.

5.4 Standard of Conduct; Right to Rely; Limitation of Liability.

(a) **Standard of Conduct.** Each Manager, in managing the business or affairs of the LLC and any Series, will discharge his duties: (i) in a manner he believes in good faith to

be in the best interests of the LLC and/or applicable Series; (ii) in a manner he believes in good faith to represent the care an ordinarily prudent person in a like position would exercise under similar circumstances; (iii) in good faith reliance on the provisions of this Agreement and any applicable Series Agreement; and (iv) without intentional misconduct or a knowing violation of law. Except for the implied contractual covenant of good faith and fair dealing under applicable Delaware law, no Manager has any other duty to the LLC, any Series, any Unitholder or any other Person. The provisions of this Agreement replace, eliminate and otherwise supplant those duties (including fiduciary duties) that a Manager might otherwise have under applicable law, including the Act.

(b) **Right to Rely.** The Manager shall not be held liable to the LLC, any Series or to the Unitholders, for relying in good faith upon the records required to be maintained by this Agreement or upon such information, opinions, reports or statements prepared and presented by the Unitholders, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the LLC or any Series, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.

(c) **Limitation of Liability.** No Manager shall be liable to the LLC, any Series or any Unitholder for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Manager in good faith on behalf of the LLC and/or a Series and in a manner reasonably believed to be within the scope of authority conferred on such Manager by this Agreement, except that the foregoing exculpation shall not apply to any such loss, damage or claim incurred by reason of the gross negligence or willful misconduct of such Manager.

(d) **Applicability to Persons whom the Manager has Delegated Authority.** The Manager may, but is not required to, provide for the limitation of liability in excess of any limitation granted by the Act for Persons to whom the Manager delegates management authority.

5.5 **No Exclusive Duty.** No Manager shall be required to manage the LLC or any Series as its sole and exclusive function. Except as otherwise provided in this Agreement or a Series Agreement, a Manager, its owners, or Affiliates of the Manager or its owners may have other business interests and may engage in other activities in addition to those relating to the LLC or a Series. Neither the LLC, a Series nor any Unitholder associated with such Series shall have any right, by virtue of this Agreement, to share or participate in such permitted investments or activities of a Manager or its owners or any Affiliate of a Manager or its owners or in the income or proceeds derived therefrom. A Manager shall devote that amount of time to a Series as is necessary to manage and supervise the business and affairs of the Series in accordance with this Agreement.

5.6 **Indemnification.** To the fullest extent provided or allowed by law, the LLC shall indemnify, hold harmless and defend its Managers, employees and agents (including any Person to whom the Manager has delegated authority) (each, a "**Covered Person**") for all costs, losses, liabilities and damages paid or incurred by such Covered Persons in connection with the business of the LLC and any Series, except for acts or omissions for which the Covered Person is not absolved from liability under Section 5.4(c). Notwithstanding any other provision of this Agreement, any indemnification under this Agreement will be provided only out of LLC assets in the case of an indemnification obligation payable by the LLC or only out of the assets of a

particular Series in the case of an indemnification obligation payable that Series, and no Unitholder (or Related Party to or Affiliate of the Unitholder) will have personal liability for indemnification.

ARTICLE VI MEMBERS

6.1 Duties of Members. Except as otherwise provided in this Agreement, a Member who is not also a Manager owes no duties to the LLC, to any Series or to the Unitholders solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement or a Series Agreement, exercises some or all of the rights of a Manager in the management and conduct of the LLC's or a Series' business is held to the standards of conduct applicable to Managers under this Agreement or any applicable Series Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Liability of Members. No Member shall be liable for any debts or losses of capital or profits of the LLC or any Series.

6.3 No Agency Authority. Except as expressly provided in this Agreement, no Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series.

6.4 Representations and Warranties of Members. Each Member, and in the case of a Member who is a Person other than an individual, the Person(s) executing this Agreement on behalf of such Member, hereby represents and warrants to the LLC, the Series such Member is associated with and each other Member of such Series: (a) that if that Member is a Person other than an individual, it is duly organized, validly existing and in good standing under the law of its state of organization; (b) the Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder, and that all actions necessary for the due authorization, execution, delivery and performance of this Agreement by that Member have been duly taken; (c) the Member has duly executed and delivered this Agreement; (d) the Member's authorization, execution, delivery and performance of this Agreement do not conflict with any other agreement or arrangement to which the Member is a party or by which the Member is bound; (e) that the Member is acquiring its Interest for the Member's own account as an investment and without an intent to distribute the Interest; and (f) that the Member acknowledges that the Interests have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements. The inclusion of the foregoing does not constitute an acknowledgment that an Interest is a security under applicable law, and the LLC reserves the right to contest whether an Interest in the LLC constitutes a security.

6.5 Indemnification for Breach. Each Member shall and does hereby agree to indemnify and hold harmless the LLC, any Series in which such Member is associated and the other Members of such Series from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty on the part of such Member and such Member's breach of any other provision of this

Agreement. All such losses, costs, liabilities, damages and expenses sustained by the LLC, any Series in which such Member is associated with or any other Member of such Series arising out of any willful breach of this Agreement by such Member may be offset against distributions (interim and liquidation) or payments otherwise due to such Member.

ARTICLE VII MEMBER MEETINGS

7.1 **No Required Meetings.** The Members may but shall not be required to hold any annual, periodic or other formal meetings. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of Members called pursuant to the procedures in the following Section or may be given in accordance with the procedure prescribed in Section 7.3 for written consent to action in lieu of actual meetings.

7.2 Meetings of the Members.

(a) **Call for Meetings.** Meetings of the Members associated with a Series may be called only by the Manager.

(b) **Notice of Meetings.** The Manager calling a meeting of the Members shall deliver notice thereof to all of the Members associated with such Series. Any notice regarding a meeting shall be in writing and shall set forth the date and time of the meeting, the nature of the business to be transacted, and, unless the meeting is a conference call meeting, the place of the meeting. Notice of any meeting shall be given pursuant to Section 12.1 below to the Members not less than seven (7) days prior to the meeting.

(c) **Waiver of Notice.** Any notice of a meeting of the Members required to be delivered to any Member under this Agreement or the Act may be waived in writing by that Member (whether before, during or after that meeting). Notice of any meeting of the Members shall be deemed to have been waived by attendance at the meeting, unless the Member attends the meeting solely for the purpose of objecting to holding the meeting or transacting particular business at the meeting and so objects at the beginning of the meeting. Any action taken at a meeting of the Members at which proper notice was not delivered to, or waived by, all of the Members entitled to notice will be null and void and of no effect whatsoever.

(d) **Record Date.** For the purpose of determining the Members entitled to receive notice of, or to vote at, any meeting of the Members or any adjournment thereof or entitled to take any other action (including informal action authorized by the following Section), the Person(s) requesting such meeting or seeking such informal action may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than five (5) days prior to any such meeting or action.

(e) **Place of Meetings; costs.** The Manager may designate any place, either within or outside the State of Delaware, as the place of meeting for any meeting of the Members. Meetings may be virtual by computer video conferencing service or conference calls. The costs of holding meetings of the Members are to be paid by the applicable Series. **Voting.** Except as otherwise expressly provided in this Agreement, the vote, consent, approval or ratification of a majority in Interest of the Members associated with a particular Series shall be required in order

to constitute Member action. Each Member shall have that number of votes equal to such Member's number of Units associated with the Series.

(g) **Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney in fact. Such proxy shall be filed with the Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

(h) **Manner of Meetings.** Members may participate in a meeting by any communication by means of which all participating Members can hear and speak to each other during the meeting. A Member participating in a meeting is deemed to be present in person at the meeting, except where a Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. A meeting of the Members may be held via conference call with no physical location designated as the place of the meeting. The Manager calling a conference call meeting shall be responsible for arranging the conference call and shall specify in the notice of the conference call meeting the method by which the Members can participate in the conference call. The Manager will designate the person who is to preside, over the meeting. If the Manager fails to designate someone to chair a meeting of the Members, the Members shall elect by a majority in Interest of those Members present a Member to preside over the meeting, and the meeting shall be conducted pursuant to the Robert's Rules of Order. The presiding Person shall cause a record to be kept of the meeting, which shall be filed with the Series' permanent records.

7.3 **Written Consent to Action in Lieu of Actual Meetings.** Any action that is permitted or required to be taken by the Members associated with a Series may be taken or ratified by written consent setting forth the specific action to be taken, which written consent is (a) delivered to all of the Members associated with such Series in the manner provided in Section 12.1, (b) signed within thirty (30) days of being sent by that number of such Members holding the number of votes required in order to take the specified action and (c) is delivered to the Manager to be included in the Series' permanent records. The written consent may be signed in one or more counterparts.

ARTICLE VIII TRANSFER OF INTERESTS

8.1 **In General.** Except as otherwise set forth in this Article, no Unitholder shall Transfer all or any portion of its Interest without the prior written consent of the Manager of the Series to which the Interest is associated, which consent may be given or withheld in the sole discretion of the Manager. Any Transfer which does not comply with the provisions of this Article shall be void.

8.2 Rights of Assignees.

(a) Any Person (who is not already a Member) taking or acquiring, by whatever means, the Interest of any Unitholder and is not admitted as a Member pursuant to the following Section shall become an assignee with respect to such Interest.

(b) An assignee with respect to an Interest is entitled only to receive distributions and allocations with respect to such Interest as set forth in this Agreement or applicable Series Agreement, and shall have no other rights, benefits or authority of a Member under this Agreement, a Series Agreement or the Act, including without limitation no right to receive notices to which Members are entitled under this Agreement or a Series Agreement, no right to vote, no right to access to information concerning the LLC's or a Series' transactions, no right to inspect or copy the books or records of the LLC or a Series, and no other rights of a Member under the Act, this Agreement or a Series Agreement. Provided, however, the Interest of an assignee shall be subject to all of the restrictions, obligations and limitations under this Agreement, the applicable Series Agreement and the Act, including without limitation the restrictions on Transfer of Interests contained in this Article and subject to any claims or offsets the LLC or applicable Series has against the assignor of such Interest, regardless of whether those claims or offsets exist at the time the assignee takes or acquires such Interest or arises afterwards. An amendment to this Agreement may change the rights of an assignee, even if the amendment is made after the assignee takes or acquires the Interest.

(c) Notwithstanding anything to the contrary in this Agreement, an assignee shall not be entitled to receive any distributions from a Series until such assignee delivers to the Manager written notice of the Transfer, proof of the Transfer deemed sufficient by the Manager, the assignee's federal and state tax identification numbers, the assignee's current legal address and telephone number, and such other information as the Manager may reasonably request.

(d) No Member shall be permitted to Transfer the Capital Account or rights to distributions and allocations with respect to an Interest and retain any of the other rights attendant to his Interest. Moreover, a Member shall not be permitted to Transfer the management participation and other noneconomic rights attendant to an Interest. A Member who Transfers all of the Member's Capital Account and rights to distributions and allocations with respect to the Member's entire Interest associated with a Series ceases to be a Member associated with such Series pursuant to Section 9.1(a) below.

8.3 Admission of Assignees as Members.

(a) Any Person (who is not already a Member) who takes or acquires, by whatever means, the Interest of any Unitholder in the LLC shall be admitted as a Member only upon the written consent of the Manager. The giving or withholding of such consent shall be in the sole, absolute and arbitrary discretion of the Manager. In addition, except as otherwise provided in this Agreement, no Person shall be admitted as a Member unless such Person:

- (1) Elects to become a Member by executing and delivering such Person's written acceptance and adoption of the provisions of this Agreement and the applicable Series Agreement;
- (2) Executes, acknowledges and delivers to the LLC such other instruments as the LLC may deem necessary or advisable to effect the admission of such Person as a Member; and
- (3) Pays a transfer fee to the Series in an amount sufficient to cover all reasonable expenses of the LLC and/or Series connected with the admission of such Person as a Member.

(b) An assignee who becomes a Member is liable for the obligations of the transferor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Agreement or the applicable Series Agreement. Whether or not an assignee becomes a Member, the transferor is not released from the transferor's liability to the LLC and any applicable Series.

(c) Notwithstanding anything herein to the contrary, if at any time the LLC has only one Member or there is only one Member associated with a particular Series, and if that Member's entire Interest is sold, assigned, or transferred, then the transferee(s) of such Member's Interest shall automatically be admitted as a Member.

8.4 Distributions and Allocations With Respect to Transferred Interests. If any Interest is sold, assigned or transferred during any Fiscal Year in compliance with the provisions of this Article, then (i) Profits, Losses and all other items attributable to the Interest for such period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code § 706(d), if applicable, using any conventions permitted by the Code and selected in accordance with Section 11.5; (ii) all distributions on or before the date of such sale, assignment or transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee; and (iii) the transferee shall succeed to and assume the Capital Account, Percentage Interest and Capital Contribution obligation amounts, and other similar items of the transferor to the extent related to the transferred Interest. Solely for purposes of making the allocations and distributions, the LLC shall recognize such transfer not later than the end of the calendar month during which the LLC receives notice of such transfer. If the LLC does not receive a notice stating the date the Interest was transferred and such other information as the LLC may reasonably require within thirty (30) days after the end of the Fiscal Year during which the transfer occurs, then all of such items shall be allocated, and all distributions shall be made to the Person who, according to the books and records of the LLC on the last day of the Fiscal Year during which the transfer occurs, was the owner of the Interest. Neither the LLC nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not any Manager or the LLC had knowledge of any transfer of ownership of any Interest.

8.5 Right of First Refusal.

(a) **Offered Units.** At any time, the Manager of a particular Series, or if such Series does not have a Manager, the Manager of the LLC, (the "**ROFR Rightholder**") shall have a right of first refusal if any Member of such Series (each an "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of the Units it owns in such Series (the "**Offered Units**").

(b) **Offering; Exceptions.** Each time the Offering Member receives an offer for to Transfer of any of its Units (or applicable Unit Equivalents) (other than Transfers that (i) are permitted by Section 8.1, or (ii) are made pursuant to the LLC's call rights under Section 9.5.), the Offering Member shall first make an offering of the Offered Units to the ROFR Rightholder prior to Transferring such Offered Units to the proposed purchaser.

(c) **Offer Notice.**

(i) The Offering Member shall, within five (5) Business Days of receipt of the Transfer offer, give written notice (the “**Offer Notice**”) to the ROFR Rightholder stating that it has received a bona fide offer for a Transfer of its Units (or applicable Unit Equivalents) and specifying: (1) the number of Offered Units to be Transferred by the Offering Member; (2) the proposed date, time, and location of the closing of the Transfer, which shall not be less than 60 (sixty) days from the date of the Offer Notice; (3) the purchase price per Offered Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and (4) the name of the Person who has offered to purchase such Offered Units.

(ii) The Offer Notice shall constitute the Offering Member’s offer to Transfer the Offered Units to ROFR Rightholder, which offer shall be irrevocable until the end of the ROFR Option Period described in Section 8.5(d)(ii).

(iii) By delivering the Offer Notice, the Offering Member represents and warrants to the ROFR Rightholder that: (1) the Offering Member has full right, title, and interest in and to the Offered Units; (2) the Offering Member has all the necessary power and authority and has taken all necessary action to Transfer such Offered Units as contemplated by this Section 8.5; and (3) the Offered Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(d) **Exercise of Right of First Refusal.**

(i) Upon receipt of the Offer Notice, the ROFR Rightholder shall have the right to purchase no less than all of the Offered Units.

(ii) The ROFR Rightholder may exercise its right to purchase the Offered Units by delivering a written notice (a “**ROFR Exercise Notice**”) to the Offering Member within fifteen (15) Business Days following the receipt of the Offer Notice (such period, the “**ROFR Option Period**”). The ROFR Exercise Notice shall state the ROFR Rightholder’s intention to purchase all of the Offered Units on the terms and at the purchase price set forth in the Offer Notice. Any ROFR Exercise Notice shall be binding upon delivery and irrevocable by the ROFR Rightholder.

(iii) If the ROFR Rightholder does not deliver a ROFR Exercise Notice by the end of the ROFR Option Period, the ROFR Rightholder will be deemed to have waived its rights of first refusal under this Section 8.5 with respect to the Transfer of Offered Units, but shall not affect their respective rights with respect to any future Transfers.

(e) **Consummation of Sale.** If the ROFR Rightholder exercises its rights to purchase the Offered Units, then the Offering Member shall sell, and the ROFR Rightholder shall purchase such Offered Units within sixty (60) days following the expiration of the ROFR Option Period (which period may be extended for a reasonable time not to exceed ninety (90) days to the extent reasonably necessary to obtain required approvals or consents from any Governmental Authority). The Offering Member shall take all actions reasonably necessary to consummate the sale contemplated by this Section 8.5(e), including, without limitation, entering into agreements and delivering certificates and instruments and consents as the ROFR Rightholder may deem necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 8.5(e),

the Offering Member shall deliver to the ROFR Rightholder certificates (if any) representing the Offered Units to be sold, free and clear of any liens or encumbrances (other than those contained in this Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the ROFR Rightholder by certified or official bank check or by wire transfer of immediately available funds.

(f) **Sale to Proposed Purchaser.** If the ROFR Rightholder does not elect in the aggregate to purchase the Offered Units, then the Offering Member may Transfer all of such Offered Units, at a price per Offered Unit not less than specified in the Offer Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offer Notice, but only if such Transfer occurs within ninety (90) days after expiration of the ROFR Option Period. Any Offered Units not Transferred within such 90-day period will be subject to the provisions of this Section 8.5 upon subsequent Transfer.

ARTICLE IX CESSATION OF MEMBERSHIP

9.1 **Cessation Events.** A Person who is a Member shall cease to be a Member with respect to a particular Series only upon the occurrence of one of the following events:

- (a) The sale, assignment or transfer as permitted under this Agreement or by operation of law of the Member's entire Interest associated with such Series. A pledge or hypothecation as permitted under this Agreement shall not result in the cessation of Membership.
- (b) The occurrence of an Event of Bankruptcy with respect to the Member.
- (c) In the case of an individual Member, the Member's death.
- (d) In the case of an individual Member, the adjudication by a court that the Member is incompetent to manage his person or property.
- (e) In the case of a Member that is acting as a Member by virtue of being the trustee of a trust, the termination of the trust.
- (f) In the case of a Member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the Member.
- (g) In the case of a Member that is a corporation, the dissolution of the Member, the revocation of its charter, or the suspension of its right to conduct business by the jurisdiction of its incorporation unless within 30 days after such dissolution or the corporation's actual notice of the revocation or suspension, the dissolution is revoked or the corporation's charter or right to do business is reinstated.
- (h) The entry by any court of an order to charge the Interest of the Member associated with such Series.
- (i) As provided in Section 1.8(c), and 5.1(d)(e)(f).

9.2 **No Voluntary Withdrawal.** A Member is not entitled to withdraw voluntarily from the LLC.

9.3 **Deceased, Incompetent, Bankrupt, or Dissolved Members.** The personal representative, executor, administrator, guardian, conservator or other legal representative of a deceased individual Member or of an individual Member who has been adjudicated incompetent may exercise the rights of such former Member for the purpose of administration of such deceased Member's estate or such incompetent Member's property. The beneficiaries and heirs of any deceased Member who are not already Members shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. Upon the occurrence of an Event of Bankruptcy with respect to a Member the legal representative of such former Member may exercise the rights of such former Member for the purpose of administration of such former Member's estate or such former Member's property. If a Member who is a Person other than an individual is dissolved, the legal representative or successor of such Person may exercise the rights of the former Member pending liquidation. The distributees of such Person shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. A purchaser of a Member's Interest at a foreclosure sale shall be an assignee with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3.

9.4 **Consequences of Cessation of Membership.** If a Person ceases to be a Member with respect to a particular Series as provided in Section 9.1 above, such former Member (or such former Member's successor in interest) shall continue to be liable for all of the obligations of the former Member to the LLC and any Series in which the former Member is associated with, including any obligation to make Capital Contributions. Such former Member (or such former Member's successor in interest) shall be an assignee with respect to the Interest associated with such Series that such Person continues to own, if any, with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only after complying with the provisions of Section 8.3.

9.5 **Call Right.**

(a) **Right to Purchase.** Notwithstanding any other provisions of this agreement, at any time on or after the Effective Date (the "**Call Commencement Date**"), the LLC has the continuing option and right (the "**Call Right**"), but not the obligation, to cause any Member or its transferee (the "**Call Seller**") to sell all of its Units (the "**Call Units**") to the LLC in accordance with this Section 9.5. The LLC may exercise the Call Right in its sole discretion.

(b) **Call Right Procedures; Purchase Price.**

(i) The LLC may exercise the Call Right by delivering to the Call Seller a written notice (the "**Call Exercise Notice**") stating its election to purchase the Call Units from the Call Seller for a specified purchase price (the "**Call Purchase Price**"). The Call Purchase Price will be equal to the fair market value of the Call Units; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest

of the LLC or a Series then the purchase price will be equal to, at the Manager's election, (1) the fair market value of the Call Units, (2) the balance of the Call Seller's Capital Account, or (3) the investment amount specified in the Call Seller's Subscription Agreement. The Manager may select the smallest of the amounts specified in the preceding sentence, but is not required to do so.

(ii) For purposes of this Section 9.5, the term "***fair market value***" means the fair market value of the Call Units as of the date of the Call Exercise Notice, as determined by the Manager, taking into consideration such factors as the Manager deems appropriate. The phrase "***contrary to the interest of the LLC or a Series***" includes, but is not limited to, the following acts: (1) demanding cash or distributions not authorized by this agreement; (2) interfering with or attempting to improperly influence the Manager's exercise of its authority to manage the LLC, any Series, or any investment; or (3) making any statement to any Person concerning the Manager, the LLC, any Series, any investment made by a Series, or any other matter in connection with the foregoing which, if taken at face value by a theoretical potential investor would tend to dissuade such an investor from contributing capital to the LLC or a Series.

(iii) Upon the closing of any purchase consummated pursuant to the Call Right, the Call Seller will be deemed to represent and warrant to the LLC that (1) it has full right, title, and interest in and to the Call Units, (2) it has all the necessary power and authority and has taken all necessary action to sell the Call Units as contemplated by this Section 9.5, and (3) the Call Units are free and clear of any and all liens, pledges, security interests, options, rights of first offer, encumbrances, or other restrictions or limitations.

(c) **Closing.** The closing of the purchase of the Call Units pursuant to the Call Right (the "***Call Closing***") shall take place no later than thirty (30) days following the delivery of the Call Exercise Notice. The LLC shall give the Call Seller at least one (1) Business Days' written notice of the date of closing (the "***Call Right Closing Date***"). At the Call Closing on the Call Right Closing Date:

(i) The LLC shall pay the Call Purchase Price to the Call Seller by check, certified or official bank check, ACH, or by wire transfer of immediately available funds; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest of the LLC or a Series then the Call Purchase Price shall be payable to the Call Purchase Seller in one or more installments in accordance with a schedule to be established by the Manager, which schedule must provide that all installments will be due not more than twelve (12) months from the Call Right Closing Date.

(ii) The Call Seller shall deliver to the LLC a certificate or certificates (if any) representing the Call Units to be sold, accompanied by an assignment of any certificate or certificates to the LLC. If the Call Units are not certificated, the LLC shall transfer the Call Units on its own records.

(d) **Cooperation.** The Call Seller shall take all actions as may be reasonably necessary to consummate the sale contemplated by the Call Right, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate to consummate the sale.

ARTICLE X DISSOLUTION, TERMINATION, WINDING UP AND LIQUIDATING DISTRIBUTIONS

10.1 **Dissolution of the LLC.** The LLC shall dissolve only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The entry of a decree of judicial dissolution of the LLC or the administrative dissolution of the LLC under the Act.

10.2 **Termination of a Series.** Except as provided otherwise in a Series Agreement, a Series shall be terminated only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The dissolution of the LLC.
- (c) The entry of a decree of judicial termination of the Series under the Act.

The termination and winding up of a Series will not, in it of itself, cause a dissolution of the LLC or the termination of any other Series. The termination of a Series will not affect the limitation on liabilities of the Series or any other Series provided by this Agreement, the Series Agreements, the Certificate and the Act.

10.3 **Winding Up.** Upon the termination of a Series, the Manager, or, if there is no Manager, a liquidating trustee appointed by a majority in Interest of the Members associated with such Series, shall proceed to wind up the affairs of the Series, as the case may be, as provided in this Agreement, the Series Agreement and the Act. Upon the termination of a Series, an accounting shall be made by the Series' independent accountants of the accounts of the Series and of the Series' assets, liabilities and operations, from the date of the last previous accounting until the date of termination. The Manager (or the liquidating trustee) shall dispose of and convey the assets of the Series as promptly as reasonably possible following termination as is consistent with obtaining the fair market value for the assets of the Series. Until final distribution, the Manager (or the liquidating trustee) shall continue to operate the assets with all of the power and authority of the Manager. The costs of the liquidation shall be borne as an expense of the Series.

(a) **Liquidating Distributions.** A Series' assets and proceeds from the disposition of the Series' assets shall be distributed as specified on Exhibit A of the Series Agreement.

(b) To the extent a terminated Series is classified as a partnership for federal tax purposes, the Manager (or the liquidating trustee) shall use its reasonable efforts to comply with the timing requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(g) and make the distributions pursuant to Subsection (b) by the end of the taxable year in which the Series liquidates (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)) or, if later, within 90

days following such liquidation, but will not be bound to do so or liable in any way to any Person for failure to do so.

(c) Distributions pursuant to Section 10.4 and Exhibit A of the Series Agreement may be made to a trust established by the Members associated with such Series or the Series for the benefit of the Unitholders associated with such Series for the purposes of liquidating the Series' assets, collecting amounts owed to the Series, and paying liabilities or obligations of the Series. The assets of any such trust shall be distributed to the Unitholders from time to time, in the reasonable discretion of the trustee of the liquidating trust, in the same proportions as the amount distributed to such trust by the Series otherwise would have been distributed to the Unitholders pursuant to this Agreement.

10.4 No Deficit Restoration Obligation. Notwithstanding anything to the contrary in this Agreement, upon liquidation, if any Unitholder has a deficit Capital Account with respect to a Series (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Unitholder shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Unitholder's Capital Account, and the negative balance of such Unitholder's Capital Account shall not be considered a debt owed by such Unitholder to the LLC, to the Series or to any other Person for any purpose whatsoever.

ARTICLE XI BOOKS AND RECORDS; TAX MATTERS

11.1 Books and Records. The LLC shall keep adequate books and records, which shall set forth an accurate account of all transactions of each Series, including the Agreed Value of property contributed or to be contributed to the capital of the Series. The books and records, together with a copy of this Agreement, each Series Agreement and the Certificate will at all times be maintained at the principal place of business of the LLC and the applicable Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the records maintained for each Series must account for the assets associated with the Series separately from the other assets of the LLC or of any other Series. Upon reasonable written request, each Member associated with a Series or its designated representative will have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the books and records of the Series for any purpose reasonably related to the Member's interest with respect to the Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the Manager may, to the maximum extent permitted by applicable law, keep confidential and withhold from the Members associated with a Series any information or documents the disclosure or production of which the Manager believes, in his sole and absolute discretion, is not in the best interest of the LLC or the Series or is adverse to the interests of the LLC or the Series or which the LLC or the Manager is required by law or by an agreement with any Person to keep confidential or withhold. Such information or documentation may include, without limitation, the financial information to which Members may otherwise be entitled under Section 11.3 herein. The LLC and the Manager shall keep confidential each Member's name, address, email address, telephone number, investment amount, Subscription Agreement, and other personal data (the "**Member Confidential Information**"), and shall not disclose the Member Confidential Information to other Members. Pursuant to Section 18-305(g)

of the Act, the Members will only have such rights to obtain information relating to the LLC or its investments, or access to the books and records of the LLC and each Series, as expressly provided in this Agreement and only as the information pertains to an individual Member's own interest. Disclosure of Member Confidential Information in violation of this section will be deemed not to be in the best interest of the LLC or any Series.

11.2 Bank and Financial Accounts. The funds of a Series may be deposited in the name of the Series or in the name of the LLC as the Manager may determine in his sole discretion in such bank accounts or investment accounts as may be determined by the Manager and shall be withdrawn solely on the signature of those Persons authorized by the Manager as evidenced by written resolution. All funds and other assets of a Series will be accounted for as the property of the Series in the books and records of the LLC and the Series, irrespective of the name in which legal title to the assets of the Series is held.

11.3 Taxable Year; Accounting Methods; . To the extent a Series is not treated as disregarded as an entity separate from its owner for federal income tax purposes, the Series shall use the Fiscal Year as its taxable year. The Series shall report its income for income tax purposes using the method of accounting as may be selected from time to time by the Manager and permitted by law.

11.4 Tax Returns and Information. The Manager shall cause the preparation and the timely filing with necessary extensions of all applicable federal and applicable state tax returns of each Series. The tax information necessary to enable each Member to prepare its state, federal, local and foreign income tax returns shall be delivered to each Member within a reasonable period after the end of each Fiscal Year but generally not later than September 15th.

11.5 Tax Elections. Except as otherwise provided in this Agreement or a Series Agreement, the Manager shall cause each Series to make any and all elections for federal, state and local tax purposes including, without limitation, any election to adjust the basis of Series' assets pursuant to Code Sections 734(b), 743(b), 754 and 755 or comparable provisions of state or local law, in connection with transfers of Interests associated with a Series and distributions from a Series.

11.6 Tax Audits. With respect to any Series classified as a partnership for federal income tax purposes, for taxable years beginning before January 1, 2018 and to which the Revised Partnership Audit Procedures are not applicable, the Manager shall appoint a Member associated with a Series as the "*tax matters partner*" of such Series under Code § 6231(a)(7) and for taxable years to which the Revised Partnership Audit Procedures are applicable, the Manager shall appoint a Person to be or act as (in the Manager's sole discretion) the "*partnership representative*" of the Series under Code § 6223(a) (as amended by the Revised Partnership Audit Procedures) (the tax matters partner or partnership representative, as applicable, the "*Tax Matters Member*"). The Tax Matters Member of a Series shall represent the Series in all administrative and judicial proceedings involving federal, state or local income and other tax matters (collectively, "*tax matters*") as the Tax Matters Member. Subject to the first obtaining approval of a majority in Interest of the Members associated with the Series, the Tax Matters Member is authorized to contest or continue to contest any income tax deficiencies assessed or proposed to be assessed by any income taxing authority on such Series. Each Member associated with a Series shall cooperate with the Tax

Matters Member of such Series and do or refrain from doing any or all things reasonably requested by the Tax Matters Member with respect to the conduct of any examinations or proceedings involving tax matters. Each Series will indemnify and reimburse the Tax Matters Member for all expenses (including legal and accounting fees) incurred as Tax Matters Member pursuant to this Section, including (but not limited to) any expenses incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Series or the Members associated with such Series attributable to their Interests associated with such Series to the extent authorized by the Manager. The Members associated with a Series shall be kept informed of, and given an opportunity to participate in a non-binding manner in, all such tax matters of such Series which the Tax Matters Partner reasonably deems to be material. The Manager of a Series may remove any Member serving as the tax matters partner for such Series and appoint another Member to serve in that capacity or remove any Person serving as the partnership representative of such Series and appoint another Person to serve in that capacity at any time. If a Series pays an imputed underpayment pursuant to Code § 6223 (as amended by the Revised Partnership Audit Procedures), to the extent possible, the portion thereof attributable to a Unitholder may (within the discretion of the Manager) be treated as a withholding tax with respect to such Unitholder under Section 3.2. To the extent such portion of an imputed underpayment cannot be withheld from a current distribution, the Unitholder (or former Unitholder) shall be liable to the Series for the amount that cannot be so offset. The Series (in the discretion of the Manager) may elect the alternative set forth in Code § 6226 (as amended by the Revised Partnership Audit Procedures) instead of paying an imputed underpayment.

ARTICLE XII MISCELLANEOUS

12.1 **Notices.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the Person or to an officer of the Person to whom the same is directed, or sent by regular, registered or certified United States mail, or by facsimile transmission or by electronic mail or by private mail or courier service, addressed as follows: if to the LLC or a Series, to its principal office address, or to such other address as may be specified from time to time by notice to the Members; if to a Unitholder or Manager, to the address set forth on the Information Exhibit attached to the applicable Series Agreement, or to such other address as the Unitholder or Manager may specify from time to time by notice to the Unitholders or Manager. Any such notice shall be deemed to be delivered, given, and received for all purposes (i) as of the date of actual receipt if delivered personally or if sent by regular mail, facsimile transmission, electronic mail or by private mail or courier service, or (ii) two (2) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified United States mail, postage and charges prepaid, return receipt requested.

12.2 **Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legatees, legal representatives, successors, transferees, and assigns.

12.3 **Construction.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party to this Agreement. No provision of this Agreement is to be interpreted as a penalty upon, or a forfeiture

by, any party to this Agreement. The parties acknowledge that each party to this Agreement has shared equally in the drafting and construction of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party hereto than another.

12.4 Entire Agreement; No Oral Limited Liability Company Agreements or Series Agreements; Amendments to the Limited Liability Company Agreement or Series Agreements. This Agreement, the Series Agreements and the Subscription Agreements constitute the entire agreement among the parties with respect to the affairs of the LLC and any Series, and supersedes all prior agreements and understandings, whether oral or written. The LLC shall have no oral operating agreements and no Series shall have any oral Series Agreement. Except as otherwise provided in this Agreement, this Agreement and any Series Agreement may be amended only in writing by the Manager. Provided, however, that (i) no such Amendment by the Manager shall be effective to the extent that such amendment has a Material Adverse Effect upon one or more Members (Excepting Manager's broad authority as provided in Section 5.1 above) and (ii) no amendment of any provision of this Agreement shall, without the approval of the affected Member: (1) affect the limited liability of such Member; (2) increase such Member's obligation to make a Capital Contribution; or (3) amend this Section 12.4. For purposes of the preceding sentence, "**Material Adverse Effect**" shall mean any modification of the relative rights to distributions from a Series. Without limiting the generality of the foregoing: an amendment which has a proportionate effect on all Members (or in the case of a redemption of Interests or issuance of additional Interests, an amendment which has a proportionate effect on all Members immediately after such redemption or issuance) with respect to their rights to distributions shall be deemed to not have a Material Adverse Effect on any Member.

12.5 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the LLC or any Series.

12.6 Arbitration. ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY'S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC. NOTWITHSTANDING

ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A MEMBER'S RIGHTS TO INITIATE OR PURSUE ARBITRATION UNDER THIS AGREEMENT SHALL IMMEDIATELY TERMINATE UPON THE REMOVAL OF SUCH MEMBER FOR ANY REASON AS PROVIDED FOR UNDER SECTION 5.1. ONLY THOSE MEMBERS WHO HAVE PAID THE ENTIRETY OF THEIR REQUIRED INVESTMENT AMOUNTS UNDER THE APPLICABLE SUBSCRIPTION AGREEMENTS SHALL BE CONSIDERED MEMBERS FOR PURPOSES OF BEING ENTITLED TO INITIATE AN ARBITRATION. DISPUTES CONCERNING WHETHER A PARTY WHO INITIATES AN ARBITRATION HAS STANDING TO DO SO AS A MEMBER SHALL NOT BE DETERMINED BY THE ARBITRATOR BUT RATHER BY A COURT OF COMPETENT JURISDICTION.

12.7 **Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

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

12.9 **Additional Documents.** Each Member, upon the request of the LLC, agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

12.10 **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons indicated thereby may require.

12.11 **Governing Law; Consent to Jurisdiction.** The laws of the State of Delaware shall govern the validity of this Agreement, the construction and interpretation of its terms, and organization and internal affairs of the LLC and the limited liability of the Members. Each party to this Agreement hereby irrevocably consents to the personal jurisdiction of the state and federal courts sitting in the State of Delaware with respect to the enforcement of an arbitrator's ruling under Section 12.6 or emergency judicial relief.

12.12 **Waiver of Action for Partition.** Each of the Members irrevocably waives any right that it may have to maintain any action for partition with respect to any of the assets of the LLC.

12.13 **Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronic mail, and such facsimile or electronic mail execution shall have the full force and effect of an original signature. All fully executed counterparts hereof, whether original executions or facsimile executions or electronic mail executions or a combination, shall be construed together and shall constitute one and the same agreement.

12.14 **Power of Attorney.** Each Unitholder associated with a Series hereby irrevocably makes, constitutes and appoints the Manager associated with such Series, with full power of substitution, so long as the Manager is acting in such capacity (and any successor Manager thereof

so long as such Manager is acting in such capacity), its true and lawful attorney, in such Unitholder's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the LLC or such Series:

(a) all documents which the Manager deems necessary or desirable to effect the dissolution and termination of the LLC or such Series which dissolution and termination shall have been authorized in accordance with the terms of this Agreement;

(b) all such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the LLC or such Series shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the LLC or such Series; and

(c) all instruments, documents and certificates which the Manager deems necessary or desirable in connection with the conversion or reorganization of the LLC into another form of entity.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency or dissolution of each granting Unitholder and shall survive the delivery of any assignment by the Unitholder of the whole or any portion of its Interest. Each Unitholder associated with a Series hereby releases the Manager associated with such Series from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by the Manager pursuant to which the Manager purports to act as the attorney-in-fact for one or more Unitholders, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 12.14.

12.15 Title to Property. The title to all real or personal property (or interests therein) now or hereafter acquired by the LLC or any Series shall be held by and vested in the LLC or such Series, and not by or in any Member, individually.

12.16 Time of the Essence. Time is of the essence with respect to each and every term and provision of this Agreement.

12.17 Waivers. No consent or waiver, express or implied, by any party with respect to any breach or default in the performance by any other party of its obligations hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder, and any failure on the part of any party to complain regarding any act of any other party which constitutes a breach of such other party's obligations hereunder or to declare any such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

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

12.19 **Exhibits.** The Exhibits to this Agreement, each of which is incorporated by reference, are:

EXHIBIT A: Certificate of Formation

EXHIBIT B: The Series Agreements

EXHIBIT C: Glossary of Terms

EXHIBIT D: Regulatory Allocations

IN WITNESS WHEREOF, the Members, the Manager, and the LLC have executed this Agreement the day and year indicated on the following execution page, to be effective as of the Effective Date.

Execution page follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized on the date stated opposite that party's signature.

STELLAR, LLC

Date: 10/30/2022

By: 
David Engel
Managing Member

YIELD CAPITAL LLC

By: Stellar, LLC, its manager

Date: 10/30/2022

By: 
David Engel
Managing Member

-

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Exhibit A
Certificate of Formation

See Attached

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Exhibit B
The Series Agreements

See Attached

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Exhibit C Glossary of Terms

Many of the capitalized words and phrases used in this Agreement are defined below. Some defined terms used in this Agreement are applicable to only a particular Section of this Agreement or an Exhibit and are not listed below, but are defined in the Section or Exhibit in which they are used.

“**Act**” shall mean the Delaware Uniform Limited Liability Company Act, as in effect in Delaware and set forth at 6 Delaware Code, Chapter 18, Sections 18-101 through 18-1109 (or any corresponding provisions of succeeding law).

“**Adjusted Capital Account**” means, with respect to any Unitholder, such Person’s Capital Account (as defined below) as of the end of the relevant Fiscal Year increased by any amounts which such Person is obligated to restore, or is deemed to be obligated to restore pursuant to the next to last sentences of Treasury Regulations § 1.704-2(g)(1) (share of minimum gain) and 1.704-2(i)(5) (share of member nonrecourse debt minimum gain).

“**Affiliate**” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person directly or indirectly owning or controlling 10 percent or more of any class of outstanding equity interests of such Person or of any Person which such Person directly or indirectly owns or controls 10 percent or more of any class of equity interests, (iii) any officer, director, general partner or trustee of such Person, or any Person of which such Person is an officer, director, general partner or trustee, or (iv) any Person who is an officer, director, general partner, trustee or holder of 10 percent or more of the equity interests of any Person described in clauses (i) through (iii) of this sentence.

“**Agreed Value**” shall mean with respect to any noncash asset of a Series an amount determined and adjusted in accordance with the following provisions:

- (1) The initial Agreed Value of any noncash asset acquired by a Series other than by contribution by a Unitholder shall be its adjusted basis for federal income tax purposes.
- (2) The initial Agreed Value of any noncash asset contributed to the capital of a Series by any Unitholder shall be its gross fair market value on the date of its contribution, as agreed to by the contributing Unitholder and the Series.
- (3) The Agreed Value of any noncash asset distributed from a Series to any Unitholder shall be its gross fair market value, as determined by the Manager, as of the date the noncash asset is distributed.
- (4) Unless the Manager determines that making the adjustments under this paragraph (d) are not necessary to preserve the Unitholders’ economic interests in a Series, the Agreed Values of all noncash assets of a Series, regardless of how those assets were acquired, shall be adjusted from time to time to equal their gross fair market values, as determined by the Manager, as of the following times:

- (5) the acquisition of an Interest or an additional Interest associated with the Series by any new or existing Member in exchange for more than a de minimis Capital Contribution;
- (6) the distribution from the Series of more than a de minimis amount of money or other property as consideration for all or part of an Interest associated with such Series;
- (7) the liquidation of the Series within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g);
- (8) the grant of an Interest associated with the Series in the LLC (other than a de minimis Interest) as consideration for the provision of services to or for the benefit of the Series by an existing Unitholder acting in a “partner capacity” within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iii) or by a new Unitholder acting in a partner capacity or in anticipation of being a Unitholder; and
- (9) the issuance of a noncompensatory option (other than an option for a de minimis Interest) within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iv).
- (10) The Agreed Values of a Series’ noncash assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), except that Agreed Values of a Series’ noncash assets will not be adjusted under this paragraph (e) to the extent that an adjustment under paragraph (d) of this definition is made in connection with the transaction that would otherwise result in an adjustment under this definition.
- (11) If the Agreed Value of a noncash asset of a Series has been determined or adjusted pursuant to paragraph (b), (d) or (e) of this definition, such Agreed Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses (or items, if any of income, gain, expense, deduction, or loss of the Series to be allocated hereunder that are not included in the computation of Profits and Losses).

“**Agreement**” shall mean this Amended and Restated Limited Liability Company Agreement as amended from time to time.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in the City of New York are authorized or required to close.

“**Call Closing**” has the meaning stated in Section 9.5(c).

“**Call Closing Date**” has the meaning stated in Section 9.5(c)

“**Call Commencement Date**” has the meaning stated in Section 9.5(a).

“**Call Exercise Notice**” has the meaning stated in Section 9.5(b)(i).

“**Call Purchase Price**” has the meaning stated in Section 9.5(b)(i)

“**Call Right**” has the meaning stated in Section 9.5(a).

“**Call Seller**” has the meaning stated in Section 9.5(a).

“**Call Units**” has the meaning stated in Section 9.5(a).

“**Capital Account**” shall mean with respect to each Unitholder an account maintained and adjusted in accordance with the following provisions:

- (1) Each Person’s Capital Account with respect to a Series shall be increased by such Person’s Capital Contributions to such Series, such Person’s distributive share of Profits of the Series, any items in the nature of income or gain of the Series that are allocated pursuant to the Regulatory Allocations and the amount of any liabilities of the Series that are assumed by such Person or that are secured by Series property distributed to such Person.
- (2) Each Person’s Capital Account with respect to a Series shall be decreased by the amount of cash and the Agreed Value of any Series property distributed to such Person pursuant to any provision of this Agreement, such Person’s distributive share of Losses of the Series, any items in the nature of loss or deduction of the Series that are allocated pursuant to the Regulatory Allocations, and the amount of any liabilities of such Person that are assumed by the Series or that are secured by any property contributed by such Person to the Series.

If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

If the Agreed Values of a Series’ assets are adjusted pursuant to the definition of Agreed Value contained in this Agreement, the Capital Accounts of all Unitholders associated with such Series shall be adjusted simultaneously to reflect the aggregate adjustments as if the Series recognized gain or loss equal to the amount of such aggregate adjustment.

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

“**Capital Contribution**” shall mean with respect to any Member, the amount of money and the initial Agreed Value of any property (other than money) contributed to a Series with respect to the Interest of such Member associated with such Series.

“**Certificate**” shall mean the Certificate of Formation required to be filed by the LLC pursuant to the Act together with all amendments thereto, if any.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor federal revenue law.

“**Current Interest**” shall have the meaning set forth in Section 2.3.

“Default Rate” shall mean a per annum rate of return on a specified principal sum, compounded monthly, equal to the greater of (a) the Prime Rate plus 1,000 basis points, or (b) 18%, but in no event greater than the highest rate allowed by law.

“Depreciation” shall mean for each Fiscal Year of a Series or other period with respect to a particular asset of the Series, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to that asset for such Fiscal Year or other period, except that if, as of the beginning of such Fiscal Year or other period, the Agreed Value of the asset differs from its adjusted basis for federal income tax purposes, Depreciation for that asset will be an amount that bears the same ratio to its Agreed Value at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year or other period bears to its adjusted tax basis at the beginning of the Fiscal Year or other period; provided, however, that if the asset’s adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period is zero, Depreciation for that asset shall be determined with reference to its Agreed Value using any reasonable method selected by the Manager.

“Effective Date” shall have the meaning set forth in Section 1.1.

“Event of Bankruptcy” shall mean, with respect to any Person, the occurrence any of the events set forth in Section 18-304 of the Act.

“First Amended and Restated Agreement” shall have the meaning set forth in the recitals.

“Fiscal Year” shall mean, as of the Effective Date, the calendar year, and, with respect to the last year of the LLC or a Series, the portion of the calendar year ending with the date of its final liquidating distributions.

“Governmental Authority” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of law), or any arbitrator, court, or tribunal of competent jurisdiction.

“Highest Designated Interest” shall have the meaning set forth in Section 2.3.

“Interest” shall mean all of the rights of each Unitholder with respect to a Series established and created under this Agreement. A Unitholder association with more than one Series will have a separate Interest in each Series. With respect to any provision of this Agreement requiring the vote, approval, consent or similar action by the Members or a group of Members with respect to any matter, unless otherwise specified, reference to a majority (or a specified percentage) in Interest of the Members or group thereof means Members holding Units constituting a majority (or specified percentage) of the Units of the Members or group of Members, determined as the date of such vote, approval, consent or action unless an earlier record date has been established for determining the Members entitled to participate in such action, in which case the determination shall be made as of the earlier record date.

“Investment Return” shall mean with respect to a Unitholder that return from Series Investments as specified in the Series Agreement commencing on the date of such Unitholder's initial Capital Contribution and applying those conventions and otherwise computed as reasonably determined by the Manager.

“LLC” shall mean YIELD CAPITAL LLC, a Delaware limited liability company.

“Manager” shall refer to the Person designated as Manager on the execution page of this Agreement and its successor until such Person shall cease to be Manager as provided herein.

“Members” shall refer collectively to Persons who own Units associated with a Series and are listed on the Information Exhibit of any Series Agreement as Members and to any other Persons who own Units associated with a Series who are admitted to the LLC as Members until such Persons have ceased to own Units associated with a Series or otherwise have ceased to be Members under the terms of this Agreement. For the avoidance of doubt, a Person can cease to be a Member associated with a particular Series because such Person no longer owns Units associated with such Series or otherwise but continue to be a Member associated with another Series. ***“Member”*** means any one of the Members.

“Member Confidential Information” has the meaning stated in Section 11.1.

“Offering Member” has the meaning set forth in Section 8.5(a).

“Offer Notice” has the meaning set forth in Section 8.5(c)(i).

“Offered Units” has the meaning set forth in Section 8.5(a)

“Percentage Interest” shall mean with respect to the Unitholder the percentage set forth opposite each such Unitholder's name on the Information Exhibit of any Series Agreement in the column labeled ***“Percentage Interest.”*** A Unitholder's Percentage Interest associated with a Series shall be a percentage equal to a fraction the numerator of which shall be the number of Units associated with such Series held by such Unitholder and the denominator of which shall be the total number of Units associated with such Series held by all Unitholders.

“Person” shall mean any natural person, partnership, trust, estate, association, limited liability company, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative capacity.

“Prime Rate” as of a particular date shall mean the prime rate of interest as published on that date in the Wall Street Journal, and generally defined therein as ***“the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.”*** If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal was published.

“Profits” and ***“Losses”*** shall mean with respect to a Series, for each Fiscal Year or other period of such Series, an amount equal to the Series' taxable income or loss for such year or period, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss or

deduction required to be stated separately pursuant to Code § 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

- (1) Any income of the Series that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;
- (2) Any expenditures of the Series described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;
- (3) If the Agreed Value of any asset of the Series is adjusted under paragraphs (c) or (d) of the definition of “**Agreed Value**,” then for purposes of computing Profits and Losses for the Fiscal Year of such adjustment, the amount of that adjustment will be taken into account as income, gain, loss or deduction, as the case may be, as if the asset had been sold for an amount equal to its adjusted Agreed Value as provided by Treasury Regulations § 1.704-1(b)(2)(iv)(f)(2);
- (4) Gain or loss recognized for federal income tax purposes from the disposition of assets of the Series shall be computed by reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;
- (5) Depreciation shall be used in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the Series’ taxable income or loss;
- (6) To the extent that Treasury Regulations § 1.704-1(b)(2)(iv)(m)(4) requires an adjustment made to the adjusted tax basis of any of the Series’ assets pursuant to Code § 734(b) to be taken into account in determining Capital Account balances as a result of a distribution made other than in liquidation of a Unitholder’s Interest, the amount of such adjustment shall be treated as a taxable gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Profits and Losses; and
- (7) Notwithstanding any other provision of this definition, no items of income, gain, expense, deduction or loss that are specifically allocated under the Regulatory Allocations Exhibit are to be taken into account in computing Profits or Losses, but the amounts of those items are to be determined by applying rules comparable to those provided in paragraphs (a) through (f) of this definition.

“**Regulatory Allocations**” shall mean those allocations of items of income, gain, loss or deduction of a Series set forth on the Regulatory Allocations Exhibit and designed to enable the Series to comply with the alternate test for economic effect prescribed in Treasury Regulations § 1.704-1(b)(2)(ii)(d), and the safe harbor rules for allocations attributable to nonrecourse liabilities prescribed in Treasury Regulations § 1.704-2.

“**Related Party**” shall mean (a) with respect to any individual, such individual’s spouse, any descendants (whether natural, adopted or in the process of adoption), any sibling, any ancestor, any trust more than fifty percent (50%) of the beneficial interests in which are owned by such

individuals or any of them, and any corporation, association, partnership or limited liability company more than fifty percent (50%) of the equity interests in which are owned by those above described individuals or trusts, (b) with respect to any trust, the owners of the beneficial interests of such trust, and (c) with respect to any corporation, association, partnership or limited liability company, the owners of more than fifty percent (50%) of the outstanding equity interests in such entity.

“Revised Partnership Audit Procedures” means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114 74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof) or any similar procedures established by a state, local, or non-U.S. taxing authority.

“ROFR Exercise Notice” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Option Period” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Rightholders” has the meaning given that term in Section 8.5(a).

“Series Agreement” shall mean the agreement establishing a Series hereunder and described therein and entered into by the Members associated with such Series.

“Series Investment” shall have the meaning set forth in Section 1.4.

“Series” shall mean a designated series of limited liability company interests in the LLC established in accordance with this Agreement and pursuant to Section 18-215 of the Act having separate rights, powers and/or duties with respect to specified obligations.

“Subscription Agreements” shall mean each of the several Subscription Agreements between the LLC and the Members who have signed Subscription Agreements.

“Transfer” shall mean any sale, assignment, transfer, conveyance, pledge, hypothecation or other disposition, voluntarily or involuntarily, by operation of law, with or without consideration or otherwise (including, without limitation, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Interest.

“Treasury Regulations” shall mean the final and temporary Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Unitholder” shall mean a Person holding Units.

“Units” represent the basis on which Interests are denominated and the basis on which the relative rights, privileges, preferences and obligations are determined under this Agreement and the Act, and the total number and class of Units associated with a Series attributed to each Unitholder shall be the number recorded on the Information Exhibit of the Series Agreement as of the relevant time.

“Unit Equivalents” means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable, or exercisable for Units, and any option, warrant, or other right to subscribe for, purchase, or acquire Units.

“Unpaid Investment Return” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the cumulative Investment Return of such Unitholder as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.1 and Section 3.2 as of such date. If any Interest represented is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unpaid Investment Return of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

“Unreturned Capital” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the aggregate Capital Contributions of such Person with respect to such Person’s Interest as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.3 as of such date. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unreturned Capital of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

Exhibit D

Regulatory Allocations

This Exhibit contains special rules for the allocation of items of income, gain, loss and deduction of a Series that is classified as a partnership for federal income tax purposes that override the basic allocations of Profits and Losses in Section 4.1 of the Agreement and any allocations of Profits and Losses contained in any Series Agreement to the extent necessary to cause the overall allocations of items of income, gain, loss and deduction of a Series to have substantial economic effect pursuant to Treasury Regulations § 1.704-1(b) and shall be interpreted in light of that purpose. Subsection (a) below contains special technical definitions. Subsections (b) through (h) contain the Regulatory Allocations themselves. Subsections (i), (j) and (k) are special rules applicable in applying the Regulatory Allocations.

(a) **Definitions Applicable to Regulatory Allocations.** For purposes of the Agreement, with respect to each Series, the following terms shall have the meanings indicated:

“LLC Minimum Gain” has the meaning of **“partnership minimum gain”** set forth in Treasury Regulations § 1.704-2(d), and is generally the aggregate gain a Series would realize if it disposed of its property subject to Nonrecourse Liabilities in full satisfaction of each such liability, with such other modifications as provided in Treasury Regulations § 1.704-2(d). In the case of Nonrecourse Liabilities for which the creditor’s recourse is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of a Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Member Nonrecourse Deductions” shall mean losses, deductions or Code § 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt under the general principles applicable to **“partner nonrecourse deductions”** set forth in Treasury Regulations § 1.704-2(i)(2).

“Member Nonrecourse Debt” means any Series liability with respect to which one or more but not all of the Unitholders associated with such Series or related Persons to one or more but not all of such Unitholders bears the economic risk of loss within the meaning of Treasury Regulations § 1.752-2 as a guarantor, lender or otherwise.

“Member Nonrecourse Debt Minimum Gain” shall mean the minimum gain attributable to Member Nonrecourse Debt as determined pursuant to Treasury Regulations § 1.704-2(i)(3). In the case of Member Nonrecourse Debt for which the creditor’s recourse against the Series is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of the Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Nonrecourse Deductions” shall mean losses, deductions, or Code § 705(a)(2)(B) expenditures attributable to Nonrecourse Liabilities (see Treasury Regulations § 1.704-2(b)(1)). The amount of Nonrecourse Deductions for a Fiscal Year shall be determined pursuant to Treasury Regulations § 1.704-2(c), and shall generally equal the net increase, if any, in the amount of LLC Minimum Gain for that taxable year, determined generally according to the provisions of Treasury Regulations §

1.704-2(d), reduced (but not below zero) by the aggregate distributions during the year of proceeds of Nonrecourse Liabilities that are allocable to an increase in LLC Minimum Gain, with such other modifications as provided in Treasury Regulations § 1.704-2(c).

“Nonrecourse Liability” means any liability of a Series (or portion thereof) for which no Unitholder associated with such Series bears the economic risk of loss under Treasury Regulations § 1.752-2.

“Regulatory Allocations” shall mean allocations of Nonrecourse Deductions provided in Paragraph (b) below, allocations of Member Nonrecourse Deductions provided in Paragraph (c) below, the minimum gain chargeback provided in Paragraph (d) below, the member nonrecourse debt minimum gain chargeback provided in Paragraph (e) below, the qualified income offset provided in Paragraph (f) below, the gross income allocation provided in Paragraph (g) below, and the curative allocations provided in Paragraph (h) below.

(b) **Nonrecourse Deductions.** All Nonrecourse Deductions of a Series for any Fiscal Year shall be allocated to the Unitholders associated with such Series in accordance with their Percentage Interests.

(c) **Member Nonrecourse Deductions.** All Member Nonrecourse Deductions for any Fiscal Year shall be allocated to the Unitholder who bears the economic risk of loss under Treasury Regulations § 1.752-2 with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

(d) **Minimum Gain Chargeback.** If there is a net decrease in LLC Minimum Gain for a Fiscal Year with respect to a Series, each Unitholder associated with such Series shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of such net decrease in LLC Minimum Gain, determined in accordance with Treasury Regulations § 1.704-2(g)(2) and the definition of LLC Minimum Gain set forth above. This provision is intended to comply with the minimum gain chargeback requirement in Treasury Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

(e) **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt for any Fiscal Year, each Unitholder who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt as of the beginning of the Fiscal Year, determined in accordance with Treasury Regulations § 1.704-2(i)(5), shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations §§ 1.704-2(i)(4) and (5) and the definition of Member Nonrecourse Debt Minimum Gain set forth above. This Paragraph is intended to comply with the member nonrecourse debt minimum gain chargeback requirement in Treasury Regulations § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(f) **Reallocation of Losses.** Section 4.1 notwithstanding, if and to the extent that any allocation of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) of a Series to any Unitholder associated with such Series would cause a deficit in such Unitholder's Adjusted Capital Account associated with such Series or would further reduce an existing balance that is already negative, then such Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) shall be allocated to the other Unitholders associated with such Series for whom the limitation described in this Paragraph does not apply in proportion to the amounts of Losses (or items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) that otherwise would be allocated among them for that Fiscal Year. In the event that any special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) are made pursuant to this paragraph, items of gross income of the Series and gain from subsequent periods shall be specially allocated to offset, to the extent feasible and as promptly as possible, such special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses).

(g) **Qualified Income Offset.** In the event any Unitholder unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of income and gain of a Series (consisting of a pro rata portion of each item of income, including gross income, and gain of such Series for such year) shall be allocated to such Unitholder in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit in such Unitholder's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible.

(h) **Gross Income Allocation.** In the event any Unitholder has a deficit in its Adjusted Capital Account with respect to a Series at the end of any Fiscal Year, each such Unitholder shall be allocated items of gross income and gain of such Series, in the amount of such Adjusted Capital Account deficit, as quickly as possible.

(i) **Curative Allocations.** When allocating Profits and Losses under Section 4.1, such allocations shall be made so as to offset any prior allocations of gross income under Paragraph (h) above to the greatest extent possible so that overall allocations of Profits and Losses shall be made as if no such allocations of gross income occurred.

(j) **Ordering.** The allocations in this Exhibit to the extent they apply shall be made before the allocations of Profits and Losses under Section 4.1 and in the order in which they appear above.

(k) **Waiver of Minimum Gain Chargeback Provisions.** If the Manager determines that (i) either of the two minimum gain chargeback provisions contained in this Exhibit would cause a distortion in the economic arrangement among the Members, (ii) it is not expected that a Series will have sufficient other items of income and gain to correct that distortion, and (iii) the Members associated with such Series have made Capital Contributions or received net income allocations that have restored any previous Nonrecourse Deductions or Member Nonrecourse Deductions, the Manager shall have the authority, but not the obligation, after giving notice to the Members, to request on behalf of the Series the Internal Revenue Service to waive the minimum

gain chargeback or member nonrecourse debt minimum gain chargeback requirements pursuant to Treasury Regulations §§ 1.704-2(f)(4) and 1.704-2(i)(4). The Series shall pay the expenses (including attorneys' fees) incurred to apply for the waiver. The Manager shall promptly copy all Members on all correspondence to and from the Internal Revenue Service concerning the requested waiver.

(l) **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any asset of a Series pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Unitholders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

**THIRD AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

YIELD CAPITAL LLC

A DELAWARE LIMITED LIABILITY COMPANY

The limited liability company interests represented by this limited liability company agreement have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or under the securities acts or laws of any state or territory in reliance upon exemptions from registration under those acts. By acquiring interests represented by this limited liability company agreement, each member represents that it will not sell or otherwise dispose of its interests without compliance with the provisions of this limited liability company agreement and registration or other compliance with the aforesaid acts and the rules and regulations promulgated thereunder.

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**THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT
OF
YIELD CAPITAL LLC
A DELAWARE LIMITED LIABILITY COMPANY**

THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT is made and entered into by and among Yield Capital LLC, the Manager, and the Persons and Members whose Capital Contributions are listed on the Information Exhibit annexed to the Series Agreements attached as Exhibit B (whose Member Confidential Information may be redacted pursuant to Section 11.1). Unless otherwise indicated, capitalized words and phrases in this Amended and Restated Limited Liability Company Agreement shall have the meanings set forth in the Glossary of Terms attached as Exhibit C hereto.

Recitals

- A. WHEREAS, the LLC was formed under the laws of the State of Delaware by the filing of the Certificate with the Secretary of the State of Delaware on August 30, 2019;
- B. WHEREAS, the LLC, the Members, and the Manager entered into a Limited Liability Company Agreement of Yield Capital LLC, as later amended and restated by the Manager pursuant to Section 12.4 thereof (the “*Second Amended and Restated Agreement*”);
- C. WHEREAS, Section 12.4 of the Second Amended and Restated Agreement provides that it “may be amended only in writing by the Manager”;
- D. WHEREAS, the Manager wants to amend and restate the Second Amended and Restated Company Agreement in its entirety as set forth herein for the purposes of, and on the terms and conditions set forth in, this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
FORMATION**

1.1 Formation; General Terms; Effective Date. The LLC was formed on August 30, 2019 upon the filing of the Certificate with the Delaware Secretary of State. A copy of the Certificate is attached hereto as Exhibit A.

(a) The rights and obligations of the Members and the terms and conditions of the LLC shall be governed by the Act and this Agreement, including all the Exhibits to this Agreement. Unless otherwise required by law, if and to the extent the Act and this Agreement are inconsistent with respect to any subject matter covered in this Agreement, this Agreement shall govern. Unless otherwise required by law, if and to the extent this Agreement and a Series Agreement are inconsistent with respect to any subject matter covered in this Agreement, the

Series Agreement shall govern. This Agreement shall be effective as of the date executed below by the Manager (the “**Effective Date**”).

(b) The Manager shall execute and file on behalf of the LLC all other instruments or documents, and shall do or cause to be done all such filing, recording, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the continuation and operation of a limited liability company in Delaware and in the other jurisdictions in which the LLC shall transact business.

1.2 **Name.** The name of the LLC shall be YIELD CAPITAL LLC. The business of each Series shall be conducted under the name of the Series and not under the name of the LLC generally. The Manager may amend the Certificate or any Series Agreement at any time to change the name of the LLC or Series, as the case may be. The Manager shall provide each Member with notice of any name change of the LLC and each Member associated with a Series with notice of any name change of the Series.

1.3 **Principal Office.** The principal office of the LLC and each Series shall be 16192 Coastal Hwy Lewes Delaware 19958 or such other place as the Manager may designate from time to time.

1.4 **Purpose.** The LLC shall not own any assets other than assets associated with one or more Series or cash being held on behalf of a Person in anticipation of such Person purchasing Interests in future Series to be established by the LLC nor shall the LLC have Unitholders with economic interests in the LLC apart from their interest in one or more Series. The purpose of the LLC shall be to establish Series and the purpose of each Series shall be (i) to raise capital to make debt and equity investments (a “**Series Investment**”) from time to time in companies, real estate, equipment, and ancillary businesses and investments related to or operating in the legal medical and recreational marijuana industry; (ii) to own, hold, maintain, encumber, lease, sell, transfer or otherwise dispose of all property or assets or interests in property or assets as may be necessary, appropriate or convenient to accomplish the activities described in clause (i) above; (iii) to incur indebtedness or obligations in furtherance of the activities described in clauses (i) and (ii) above; and (iv) to conduct such other activities as may be necessary or incidental to the foregoing, all on the terms and conditions and subject to the limitations set forth in this Agreement.

1.5 **Registered Agent; Registered Office.** The LLC’s registered agent and registered office are set forth in the Certificate, and may be changed from time to time by the Manager, in which case the Manager shall file any documentation required by the Act.

1.6 **Commencement and Term.** The LLC commenced at the time and on the date appearing in the Certificate and shall continue in existence until it is dissolved, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement. Except as otherwise provided in a Series Agreement, a Series will commence upon its establishment hereunder and shall continue in existence until it is terminated, its affairs are wound up and final liquidating distributions are made pursuant to this Agreement.

1.7 **Tax Classification.** The parties acknowledge that because the LLC owns no assets other than assets associated with a Series and all of the Unitholders are associated with one or more

Series and have no economic interest in the LLC apart from their interest in one or more Series, the LLC will be treated as owning no assets and having no economic owners for federal income tax purposes. The parties further acknowledge that each Series that has more than one Unitholder associated with it shall be classified as a partnership for federal income tax purposes and that each Series that has only one Unitholder associated with it shall be disregarded as an entity separate from its owner for federal income tax purposes in each instance until the effective date of any election such Series may make to change its classification for federal income tax purposes to that of a corporation. It is agreed that the Manager shall have authority, on behalf of each Series and each Unitholder, to file and make such election to change the tax classification of a Series from a partnership or a disregarded entity to a corporation at such time as the Manager determines that such a change is in the best interests of the Series.

1.8 Establishment of Series.

(a) **Establishment of Series; Series Agreement.** The LLC may establish separate Series from time to time, as contemplated by Section 18-215 of the Act. The establishment and designation of any Series shall be effective upon the issuance of Interests associated with such Series and the execution by the applicable parties thereto of a Series Agreement setting forth such establishment and designation. The terms of each Series will be generally set forth in this Agreement and as specifically set forth in the applicable Series Agreement. For all purposes of the Act, this Agreement together with each Series Agreement entered into from time to time constitute the “limited liability company agreement” of the LLC within the meaning of the Act. Notwithstanding any other provision of this Agreement, the terms and provisions of any Series Agreement may not otherwise alter or amend any other terms and provisions of this Agreement or of any other Series Agreement. At any time that there are no Interests outstanding of any particular Series previously established and designated, the LLC may abolish that Series and the establishment and designation thereof. Without limiting the authority of the LLC to establish and designate further Series, the LLC hereby establishes and designates Series with each Series Agreement. Each time the LLC establishes and designates a new Series, the Series Agreement for that particular Series will be attached as Exhibit B to this Agreement.

(b) **Series Separateness.** Each Series will have (i) separate rights, powers, duties and management from each other Series, and (ii) exclusive rights with respect to the property, obligations, profits, and losses associated with the Series and all proceeds derived therefrom. No debt, liability, obligation or expense of a Series will be a debt, liability, obligation or expense of any other Series. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a Series will be enforceable against the assets of the Series only and not against any other assets of the LLC generally or any other Series, and none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the LLC generally, or any other Series will be enforceable against the assets of the Series. The records maintained for each Series will account for the assets associated with the Series separately from the other assets of the LLC, or any other Series, and assets associated with a Series may be held, directly or indirectly, including in the name of the Series, in the name of the LLC or otherwise. Notwithstanding the foregoing, any assets or liabilities of the LLC used by (or in connection with the activities of) more than one Series will be allocated to each Series by the Manager in accordance with any reasonable method determined by the Manager. Records maintained for a Series that reasonably identify its assets, including by specific listing, category,

type, quantity, computational or allocation formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of the assets is objectively determinable, will be deemed to account for the assets associated with the Series separately from the other assets of the LLC or any other Series. No assets of one Series may be commingled with the assets of any other Series or the assets, if any, of the LLC, generally.

(c) **Interests in a Series.** The Interests of each Series shall be separate and distinct from the Interests in any other Series. Upon admission to the LLC, each Member will be designated as a Member of a particular Series. A Member may be a member of more than one Series. Each Member shall have the rights, duties and powers as herein provided with respect to each Series of which it is a member. No Member shall have any interest in or rights with respect to any Series in which it does not hold an Interest. No Member shall have any right to vote on any matter pertaining to a particular Series, or with respect to the LLC generally, except as herein expressly provided. The Information Exhibit attached to the Series Agreement of each Series will be updated from time to time as is necessary to accurately reflect the information contained therein, including, without limitation, the admission of additional Members associated with the Series. In the event a Unitholder no longer has any Unpaid Investment Return and Unreturned Capital with respect to a particular Series, then such Unitholder's Units associated with such Series shall automatically terminate.

(d) **General Applicability.** The provisions of this Agreement which are generally applicable to the LLC, any Manager, and any Member or Unitholder, including, but not limited to, provisions regarding distributions, management, Interests and dissolution and termination shall be applicable to any Series, unless expressly provided otherwise.

ARTICLE II

CAPITAL CONTRIBUTIONS; ISSUANCE OF INTERESTS; CAPITAL ACCOUNTS

2.1 **Capital Contributions.** The Members associated with a Series shall make Capital Contributions to the Series when and as required by the Series Agreement of the Series. No Member shall be obligated to make additional capital contributions after their initial contribution unless specifically required by the Series Agreement.

2.2 **Maintenance of Capital Accounts; Withdrawals; Interest.** Individual Capital Accounts with respect to a Series shall be maintained for each of the Unitholders associated with such Series. No Unitholder shall be entitled to withdraw any part of its Capital Account or to receive any distribution except as provided in this Agreement or the applicable Series Agreement. No Unitholder shall be entitled to receive any interest on its Capital Contributions or with respect to its Capital Account. Each Unitholder shall look solely to the assets of the applicable Series for the return of its Capital Contributions and, except as otherwise provided in this Agreement or the applicable Series Agreement, shall have no right or power to demand or receive property other than cash from the applicable Series. No Unitholder associated with a Series shall have priority over any other Unitholder associated with the same Series as to the return of its Capital Contributions, distributions or allocations, except as provided in this Agreement or the applicable Series Agreement.

2.3 Issuance of Units; Designating Interests; Current Interests. In exchange for its Capital Contribution each Member shall receive an Interest. Each Member's Interest shall be associated with a Series and denominated in Units, and the relative rights, privileges, preferences and obligations with respect to the Member's Interest shall be determined under this Agreement and the Act and the applicable Series Agreement based upon the number of Units held by the Member with respect to the Member's Interest. In addition, upon investing in the LLC and acquiring an Interest associated with a Series, each Member shall receive his Investment Return, if any, on a quarterly or annual basis.

ARTICLE III DISTRIBUTIONS

3.1 Current Distribution of Investment Return. Prior to the termination of a Series, except as otherwise provided in the Series Agreement for such Series, cash shall be distributed from such Series to each Unitholder associated with such Series. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.2 Distribution of Investment Return Upon Return of Capital. Except as otherwise provided in a Series Agreement, when a Unitholder associated with a Series receives a distribution from such Series that reduces such Unitholder's Unreturned Capital with respect to such Series to zero, at such time cash shall also be distributed from such Series to the extent of such Unitholder's Unpaid Investment Return. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.3 Return of Capital Distributions. Except as otherwise provided in a Series Agreement, upon the repayment of a Series Investment, the principal portion of such repayment proceeds shall be distributed from such Series to the Unitholders in proportion to their Series Investment to the extent of each such Unitholder's Unreturned Capital and until all such repayment proceeds have been distributed. See Series Agreement which supersedes and controls this Article 3 Distributions Section, "Distributions" if conflicting with the Series Agreement.

3.4 Tax Withholding. In the event any federal, foreign, state or local jurisdiction requires the LLC or any Series to withhold taxes or other amounts with respect to any Unitholder's allocable share of Profits, taxable income or any portion thereof, or with respect to distributions, the LLC or such Series shall withhold from distributions or other amounts then due to such Unitholder an amount necessary to satisfy the withholding responsibility. In such a case, the Unitholder for whom the LLC or Series has paid the withholding tax shall be deemed to have received the withheld distribution or other amount due and to have paid the withholding tax directly. Consequently, distributions to be made to a Unitholder pursuant to Sections 3.1, 3.2 or 3.3 will be reduced by any withholding made pursuant to this Section 3.4.

If it is anticipated that at the due date of the LLC's or Series' withholding obligation the Unitholder's share of cash distributions or other amounts due is less than the amount of the withholding obligation, the Unitholder with respect to which the withholding obligation applies shall pay to the LLC or the Series, as the case may be, the amount of such shortfall within ten (10) days after notice by the LLC or Series. In the event a Unitholder fails to make the required payment

when due hereunder, and the LLC or Series nevertheless pays the withholding, in addition to the LLC's or Series', as the case may be, remedies for breach of this Agreement, the amount paid shall be deemed a recourse loan from the LLC or Series to such Unitholder bearing interest at the Default Rate, and the LLC or Series shall apply all distributions (interim or liquidating) or payments that would otherwise be made to such Unitholder toward payment of the loan and interest, which payments or distributions shall be applied first to interest and then to principal until the loan is repaid in full.

3.5 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions (interim or liquidating) are subject to set-off by the LLC or Series for any past-due obligation of a Unitholder to the LLC or Series, respectively.

ARTICLE IV ALLOCATIONS

4.1 Profits and Losses. Except as otherwise provided in this Agreement or Series Agreement, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of a Series for each Fiscal Year shall be allocated among the Unitholders associated with such Series in a manner as the Manager in the exercise of his good faith discretion determines such that, after giving effect to the Regulatory Allocations Exhibit attached as Exhibit D hereto, the Capital Account of each Unitholder, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the distributions that would be made to such Unitholder pursuant to Section 10.4 if the Series were terminated, its affairs wound up and its assets were distributed to the Unitholders associated with such Series in accordance in accordance with Section 10.4.

4.2 Code Section 704(c) Tax Allocations. Income, gain, loss, and deduction with respect to any property contributed to the capital of a Series shall, solely for tax purposes, be allocated among the Unitholders associated with such Series so as to take account of any variation between the adjusted basis of such property to the Series for federal income tax purposes and its initial Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

If the Agreed Value of any Series asset is adjusted after its contribution to the Series, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Agreed Value pursuant to any method allowable under Code § 704(c) and the Treasury Regulations promulgated thereunder.

Any elections or other decisions relating to allocations under this Section shall be determined by the Manager of the Series. Absent a determination by the Manager, the remedial allocation method under Treasury Regulation § 1.704-3(d) shall be used. Allocations pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not be taken into account in computing any Unitholder's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

4.3 Miscellaneous.

(a) **Allocations Attributable to Particular Periods.** For purposes of determining Profits, Losses or any other items allocable to any period, such items shall be determined on a daily, monthly, or other basis, as determined by the Manager using any permissible method under Code § 706 and the Treasury Regulations thereunder. Absent such a determination, such items shall be determined on a daily basis.

(b) **Other Items.** Except as otherwise provided in this Agreement, all items of income, gain, loss, deduction, credit and any other allocations not otherwise provided for of a Series shall be divided among the Unitholders in the same proportion as they share Profits or Losses, as the case may be, for the year for such Series.

(c) **Tax Consequences; Consistent Reporting.** The Unitholders are aware of the income tax consequences of the allocations made by this Article and hereby agree to be bound by those allocations as reflected on the information returns of a Series in reporting their shares of Series income and loss for income tax purposes. Each Unitholder agrees to report its distributive share of Series items of income, gain, loss, deduction and credit on its separate return in a manner consistent with the reporting of such items to it by the Series. Any Unitholder failing to report consistently, and who notifies the Internal Revenue Service of the inconsistency as required by law, shall reimburse the Series for any legal and accounting fees incurred by the Series in connection with any examination of the Series by federal or state taxing authorities with respect to the year for which the Unitholder failed to report consistently.

ARTICLE V MANAGEMENT; DUTIES

5.1 Management by the Manager; Limitations on Actual Authority; Title; Delegation of Authority; Compensation.

(a) **General Authority of the Manager.** The Manager in its sole and absolute discretion shall have complete authority and exclusive control to conduct any business on behalf of the LLC and any Series without the consent of any Member, and without a vote of any Member or Members, which authority may be delegated in part as provided in Subsection (d) of this Section. No Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series. It is the express intention of this Agreement to give the Manager of the LLC and the Manager of each Series the broadest authority possible under Delaware Law. For the avoidance of doubt and without limitation, the Manager may do any of the following without the consent of any Member of a Series:

- (i) Admit new Members
- (ii) Raise additional capital by debt at any interest rate or terms, and equity or debt/equity hybrid at any valuation or terms even if such additional capital dilutes or significantly dilutes existing Members.

(iii) The Manager may issue warrants, options, and other financial instruments to secure capital investment, or incentivize key employees for performance, even if such issuance dilutes or significantly dilutes existing Members.

(iv) Call the Interest of any Member in accordance with Section 9.5.

(v) Sell, merge, exchange, transfer, swap, enter into a reverse takeover, IPO, and SPAC (Special Purpose Acquisition Company) transaction. The Manager or Principals of the Manager or its affiliates may sponsor a SPAC and include the all or part of the assets of a Series in a SPAC transaction, and may concurrently be a Sponsor of the SPAC. Furthermore, the Manager may transfer, sell, merge, exchange, swap, borrow against all the assets of a Series without approval of Members of any Series.

(b) Each Subscriber authorizes and grants Manager full and absolute authority to execute all legal documents and contracts to consummate a roll-up transaction with other Series and related investments, if in the sole and absolute opinion of Manager that a roll-up transaction will benefit the Members of all Series. In the case of a roll-up, an independent third-party valuation, acquirer allocation of purchase price (e.g., SPAC), or investment banker or similar valuation of the relative value of each Series or related investment will be completed/conducted on each entity in the roll-up to determine each Serie's percentage ownership vis-à-vis other rolled up Series and other investments managed by Manager.

(c) **Right to Rely on Action of Any Manager; Manager's Liability for Unauthorized Acts.** Persons dealing with the LLC or any Series shall have no duty to inquire whether the act of any Manager in carrying on in the usual way the business of the LLC or any Series is pursuant to the Manager's actual authority under this Agreement, and such acts shall be binding upon the LLC and such Series regardless of whether such Manager had actual authority, unless the Person dealing with such Manager had actual knowledge that the Manager was exceeding his authority.

(d) **Manager's Titles.** The Manager may use the title "Manager" or such other title or titles as determined by the Manager.

(e) **Delegation of Authority.** The Manager may, but shall not be required to, delegate by written resolutions, which resolutions may be general or may be limited to specific matters, to one Person, several Persons or a committee of Persons (with such titles as the Manager shall select) any powers or authority granted to the Manager pursuant to this Agreement or pursuant to the Act. Delegation of any powers pursuant to this Subsection shall not of itself create an employment agreement or any other contract right. The Manager may withdraw any powers delegated pursuant to this Subsection at any time and from time to time with or without cause. The delegation of authority by the Manager pursuant to this Subsection shall not relieve the Manager from the duties and responsibilities set forth in the Act or in this Agreement.

(f) **Compensation; Reimbursement of Expenses.** The Manager shall receive compensation and Performance Fees for its services as Manager as specified in the Series Agreement and all agreements between the Series, the Manager, and the companies in which the Series invest. The LLC or a Series may reimburse any Manager for all reasonable expenses

incurred by such Persons in managing and conducting the LLC's or Series' business, including (but not limited to) overhead, administrative and travel expenses.

5.2 Number, Designation, Election and Removal of Managers.

(a) **Number, Designation, Execution of Agreement.** The LLC shall have one (1) Manager, who may but need not be a Member and who shall also serve as the Manager of each Series unless the Series Agreement of a particular Series provides otherwise. Stellar, LLC ("Stellar"), a Wyoming limited liability company, is the Manager of the LLC as of the Effective Date. Each Manager shall execute and be bound by the provisions of this Agreement and any applicable Series Agreement and shall serve until its death, resignation or removal. For the avoidance of doubt, if at any time Stellar ceases to serve as the Manager for a Series, then any reference to the Manager with respect to such Series shall refer to the then acting Manager. The Manager of the LLC and the Manager of each series may only be removed by unanimous consent of the Members and the Manager. The removal or resignation of a Manager, shall not affect the Manager's rights to receive Performance and other fees associated with a Series or subsequent Performance Fees resulting from a Sale, merger, exchange, transfer, swap, reverse takeover, SPAC (Special Purpose Acquisition Company) transaction, or IPO (initial public offering).

(b) **Resignation.** A Manager may resign as the Manager of a Series at any time upon giving written notice to the Members associated with such Series. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

(c) **Vacancies.** If a Manager ceases to be a Manager of a Series, the remaining Managers of such Series, if any, shall have authority to designate another Person to fill the vacancy, subject to the right of the Members associated with such Series to designate Managers as provided in Subsection (b) of this Section. If there are no remaining Managers of such Series, the Members associated with such Series may designate a new Manager(s) according to the voting procedure described in Subsection (b) of this Section. A vacancy created by an increase in the authorized number of Managers of a Series shall be filled only by the Members associated with such Series.

5.3 Ascertaining the Actions of the Manager. The requisite vote, consent, approval or ratification of the Manager with respect to any matter may be evidenced in writing signed by the Manager or may be ascertained and evidenced in any other formal or informal matter. The proceedings and deliberations of the Manager need not be in writing. If at any time there is more than one Manager of a Series, the Managers may establish procedures for holding meetings of the Managers of such Series, taking Manager action and evidencing the Manager action taken, which procedures may include notice requirements, and shall be binding on the Members associated with such Series and Managers of such Series to the extent specified in such procedures.

5.4 Standard of Conduct; Right to Rely; Limitation of Liability.

(a) **Standard of Conduct.** Each Manager, in managing the business or affairs of the LLC and any Series, will discharge his duties: (i) in a manner he believes in good faith to

be in the best interests of the LLC and/or applicable Series; (ii) in a manner he believes in good faith to represent the care an ordinarily prudent person in a like position would exercise under similar circumstances; (iii) in good faith reliance on the provisions of this Agreement and any applicable Series Agreement; and (iv) without intentional misconduct or a knowing violation of law. Except for the implied contractual covenant of good faith and fair dealing under applicable Delaware law, no Manager has any other duty to the LLC, any Series, any Unitholder or any other Person. The provisions of this Agreement replace, eliminate and otherwise supplant those duties (including fiduciary duties) that a Manager might otherwise have under applicable law, including the Act.

(b) **Right to Rely.** The Manager shall not be held liable to the LLC, any Series or to the Unitholders, for relying in good faith upon the records required to be maintained by this Agreement or upon such information, opinions, reports or statements prepared and presented by the Unitholders, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the LLC or any Series, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.

(c) **Limitation of Liability.** No Manager shall be liable to the LLC, any Series or any Unitholder for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Manager in good faith on behalf of the LLC and/or a Series and in a manner reasonably believed to be within the scope of authority conferred on such Manager by this Agreement, except that the foregoing exculpation shall not apply to any such loss, damage or claim incurred by reason of the gross negligence or willful misconduct of such Manager.

(d) **Applicability to Persons whom the Manager has Delegated Authority.** The Manager may, but is not required to, provide for the limitation of liability in excess of any limitation granted by the Act for Persons to whom the Manager delegates management authority.

5.5 **No Exclusive Duty.** No Manager shall be required to manage the LLC or any Series as its sole and exclusive function. Except as otherwise provided in this Agreement or a Series Agreement, a Manager, its owners, or Affiliates of the Manager or its owners may have other business interests and may engage in other activities in addition to those relating to the LLC or a Series. Neither the LLC, a Series nor any Unitholder associated with such Series shall have any right, by virtue of this Agreement, to share or participate in such permitted investments or activities of a Manager or its owners or any Affiliate of a Manager or its owners or in the income or proceeds derived therefrom. A Manager shall devote that amount of time to a Series as is necessary to manage and supervise the business and affairs of the Series in accordance with this Agreement.

5.6 **Indemnification.** To the fullest extent provided or allowed by law, the LLC shall indemnify, hold harmless and defend its Managers, employees and agents (including any Person to whom the Manager has delegated authority) (each, a "**Covered Person**") for all costs, losses, liabilities and damages paid or incurred by such Covered Persons in connection with the business of the LLC and any Series, except for acts or omissions for which the Covered Person is not absolved from liability under Section 5.4(c). Notwithstanding any other provision of this Agreement, any indemnification under this Agreement will be provided only out of LLC assets in the case of an indemnification obligation payable by the LLC or only out of the assets of a

particular Series in the case of an indemnification obligation payable that Series, and no Unitholder (or Related Party to or Affiliate of the Unitholder) will have personal liability for indemnification.

ARTICLE VI MEMBERS

6.1 Duties of Members. Except as otherwise provided in this Agreement, a Member who is not also a Manager owes no duties to the LLC, to any Series or to the Unitholders solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement or a Series Agreement, exercises some or all of the rights of a Manager in the management and conduct of the LLC's or a Series' business is held to the standards of conduct applicable to Managers under this Agreement or any applicable Series Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Liability of Members. No Member shall be liable for any debts or losses of capital or profits of the LLC or any Series.

6.3 No Agency Authority. Except as expressly provided in this Agreement, no Member (by sole virtue of such Person's capacity as a Member) has the actual or apparent authority to cause the LLC or any Series to become bound to any contract, agreement or obligation, and no Member shall take any action purporting to be on behalf of the LLC or any Series.

6.4 Representations and Warranties of Members. Each Member, and in the case of a Member who is a Person other than an individual, the Person(s) executing this Agreement on behalf of such Member, hereby represents and warrants to the LLC, the Series such Member is associated with and each other Member of such Series: (a) that if that Member is a Person other than an individual, it is duly organized, validly existing and in good standing under the law of its state of organization; (b) the Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder, and that all actions necessary for the due authorization, execution, delivery and performance of this Agreement by that Member have been duly taken; (c) the Member has duly executed and delivered this Agreement; (d) the Member's authorization, execution, delivery and performance of this Agreement do not conflict with any other agreement or arrangement to which the Member is a party or by which the Member is bound; (e) that the Member is acquiring its Interest for the Member's own account as an investment and without an intent to distribute the Interest; and (f) that the Member acknowledges that the Interests have not been registered under the Securities Act of 1933, as amended, or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements. The inclusion of the foregoing does not constitute an acknowledgment that an Interest is a security under applicable law, and the LLC reserves the right to contest whether an Interest in the LLC constitutes a security.

6.5 Indemnification for Breach. Each Member shall and does hereby agree to indemnify and hold harmless the LLC, any Series in which such Member is associated and the other Members of such Series from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty on the part of such Member and such Member's breach of any other provision of this

Agreement. All such losses, costs, liabilities, damages and expenses sustained by the LLC, any Series in which such Member is associated with or any other Member of such Series arising out of any willful breach of this Agreement by such Member may be offset against distributions (interim and liquidation) or payments otherwise due to such Member.

ARTICLE VII MEMBER MEETINGS

7.1 **No Required Meetings.** The Members may but shall not be required to hold any annual, periodic or other formal meetings. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of Members called pursuant to the procedures in the following Section or may be given in accordance with the procedure prescribed in Section 7.3 for written consent to action in lieu of actual meetings.

7.2 Meetings of the Members.

(a) **Call for Meetings.** Meetings of the Members associated with a Series may be called only by the Manager.

(b) **Notice of Meetings.** The Manager calling a meeting of the Members shall deliver notice thereof to all of the Members associated with such Series. Any notice regarding a meeting shall be in writing and shall set forth the date and time of the meeting, the nature of the business to be transacted, and, unless the meeting is a conference call meeting, the place of the meeting. Notice of any meeting shall be given pursuant to Section 12.1 below to the Members not less than seven (7) days prior to the meeting.

(c) **Waiver of Notice.** Any notice of a meeting of the Members required to be delivered to any Member under this Agreement or the Act may be waived in writing by that Member (whether before, during or after that meeting). Notice of any meeting of the Members shall be deemed to have been waived by attendance at the meeting, unless the Member attends the meeting solely for the purpose of objecting to holding the meeting or transacting particular business at the meeting and so objects at the beginning of the meeting. Any action taken at a meeting of the Members at which proper notice was not delivered to, or waived by, all of the Members entitled to notice will be null and void and of no effect whatsoever.

(d) **Record Date.** For the purpose of determining the Members entitled to receive notice of, or to vote at, any meeting of the Members or any adjournment thereof or entitled to take any other action (including informal action authorized by the following Section), the Person(s) requesting such meeting or seeking such informal action may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than five (5) days prior to any such meeting or action.

(e) **Place of Meetings; costs.** The Manager may designate any place, either within or outside the State of Delaware, as the place of meeting for any meeting of the Members. Meetings may be virtual by computer video conferencing service or conference calls. The costs of holding meetings of the Members are to be paid by the applicable Series. **Voting.** Except as otherwise expressly provided in this Agreement, the vote, consent, approval or ratification of a majority in Interest of the Members associated with a particular Series shall be required in order

to constitute Member action. Each Member shall have that number of votes equal to such Member's number of Units associated with the Series.

(g) **Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney in fact. Such proxy shall be filed with the Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

(h) **Manner of Meetings.** Members may participate in a meeting by any communication by means of which all participating Members can hear and speak to each other during the meeting. A Member participating in a meeting is deemed to be present in person at the meeting, except where a Member participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. A meeting of the Members may be held via conference call with no physical location designated as the place of the meeting. The Manager calling a conference call meeting shall be responsible for arranging the conference call and shall specify in the notice of the conference call meeting the method by which the Members can participate in the conference call. The Manager will designate the person who is to preside, over the meeting. If the Manager fails to designate someone to chair a meeting of the Members, the Members shall elect by a majority in Interest of those Members present a Member to preside over the meeting, and the meeting shall be conducted pursuant to the Robert's Rules of Order. The presiding Person shall cause a record to be kept of the meeting, which shall be filed with the Series' permanent records.

7.3 **Written Consent to Action in Lieu of Actual Meetings.** Any action that is permitted or required to be taken by the Members associated with a Series may be taken or ratified by written consent setting forth the specific action to be taken, which written consent is (a) delivered to all of the Members associated with such Series in the manner provided in Section 12.1, (b) signed within thirty (30) days of being sent by that number of such Members holding the number of votes required in order to take the specified action and (c) is delivered to the Manager to be included in the Series' permanent records. The written consent may be signed in one or more counterparts.

ARTICLE VIII TRANSFER OF INTERESTS

8.1 **In General.** Except as otherwise set forth in this Article, no Unitholder shall Transfer all or any portion of its Interest without the prior written consent of the Manager of the Series to which the Interest is associated, which consent may be given or withheld in the sole discretion of the Manager. Any Transfer which does not comply with the provisions of this Article shall be void.

8.2 Rights of Assignees.

(a) Any Person (who is not already a Member) taking or acquiring, by whatever means, the Interest of any Unitholder and is not admitted as a Member pursuant to the following Section shall become an assignee with respect to such Interest.

(b) An assignee with respect to an Interest is entitled only to receive distributions and allocations with respect to such Interest as set forth in this Agreement or applicable Series Agreement, and shall have no other rights, benefits or authority of a Member under this Agreement, a Series Agreement or the Act, including without limitation no right to receive notices to which Members are entitled under this Agreement or a Series Agreement, no right to vote, no right to access to information concerning the LLC's or a Series' transactions, no right to inspect or copy the books or records of the LLC or a Series, and no other rights of a Member under the Act, this Agreement or a Series Agreement. Provided, however, the Interest of an assignee shall be subject to all of the restrictions, obligations and limitations under this Agreement, the applicable Series Agreement and the Act, including without limitation the restrictions on Transfer of Interests contained in this Article and subject to any claims or offsets the LLC or applicable Series has against the assignor of such Interest, regardless of whether those claims or offsets exist at the time the assignee takes or acquires such Interest or arises afterwards. An amendment to this Agreement may change the rights of an assignee, even if the amendment is made after the assignee takes or acquires the Interest.

(c) Notwithstanding anything to the contrary in this Agreement, an assignee shall not be entitled to receive any distributions from a Series until such assignee delivers to the Manager written notice of the Transfer, proof of the Transfer deemed sufficient by the Manager, the assignee's federal and state tax identification numbers, the assignee's current legal address and telephone number, and such other information as the Manager may reasonably request.

(d) No Member shall be permitted to Transfer the Capital Account or rights to distributions and allocations with respect to an Interest and retain any of the other rights attendant to his Interest. Moreover, a Member shall not be permitted to Transfer the management participation and other noneconomic rights attendant to an Interest. A Member who Transfers all of the Member's Capital Account and rights to distributions and allocations with respect to the Member's entire Interest associated with a Series ceases to be a Member associated with such Series pursuant to Section 9.1(a) below.

8.3 Admission of Assignees as Members.

(a) Any Person (who is not already a Member) who takes or acquires, by whatever means, the Interest of any Unitholder in the LLC shall be admitted as a Member only upon the written consent of the Manager. The giving or withholding of such consent shall be in the sole, absolute and arbitrary discretion of the Manager. In addition, except as otherwise provided in this Agreement, no Person shall be admitted as a Member unless such Person:

- (1) Elects to become a Member by executing and delivering such Person's written acceptance and adoption of the provisions of this Agreement and the applicable Series Agreement;
- (2) Executes, acknowledges and delivers to the LLC such other instruments as the LLC may deem necessary or advisable to effect the admission of such Person as a Member; and
- (3) Pays a transfer fee to the Series in an amount sufficient to cover all reasonable expenses of the LLC and/or Series connected with the admission of such Person as a Member.

(b) An assignee who becomes a Member is liable for the obligations of the transferor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Agreement or the applicable Series Agreement. Whether or not an assignee becomes a Member, the transferor is not released from the transferor's liability to the LLC and any applicable Series.

(c) Notwithstanding anything herein to the contrary, if at any time the LLC has only one Member or there is only one Member associated with a particular Series, and if that Member's entire Interest is sold, assigned, or transferred, then the transferee(s) of such Member's Interest shall automatically be admitted as a Member.

8.4 Distributions and Allocations With Respect to Transferred Interests. If any Interest is sold, assigned or transferred during any Fiscal Year in compliance with the provisions of this Article, then (i) Profits, Losses and all other items attributable to the Interest for such period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code § 706(d), if applicable, using any conventions permitted by the Code and selected in accordance with Section 11.5; (ii) all distributions on or before the date of such sale, assignment or transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee; and (iii) the transferee shall succeed to and assume the Capital Account, Percentage Interest and Capital Contribution obligation amounts, and other similar items of the transferor to the extent related to the transferred Interest. Solely for purposes of making the allocations and distributions, the LLC shall recognize such transfer not later than the end of the calendar month during which the LLC receives notice of such transfer. If the LLC does not receive a notice stating the date the Interest was transferred and such other information as the LLC may reasonably require within thirty (30) days after the end of the Fiscal Year during which the transfer occurs, then all of such items shall be allocated, and all distributions shall be made to the Person who, according to the books and records of the LLC on the last day of the Fiscal Year during which the transfer occurs, was the owner of the Interest. Neither the LLC nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section, whether or not any Manager or the LLC had knowledge of any transfer of ownership of any Interest.

8.5 Right of First Refusal.

(a) **Offered Units.** At any time, the Manager of a particular Series, or if such Series does not have a Manager, the Manager of the LLC, (the "**ROFR Rightholder**") shall have a right of first refusal if any Member of such Series (each an "**Offering Member**") receives a bona fide offer that the Offering Member desires to accept to Transfer all or any portion of the Units it owns in such Series (the "**Offered Units**").

(b) **Offering; Exceptions.** Each time the Offering Member receives an offer for to Transfer of any of its Units (or applicable Unit Equivalents) (other than Transfers that (i) are permitted by Section 8.1, or (ii) are made pursuant to the LLC's call rights under Section 9.5.), the Offering Member shall first make an offering of the Offered Units to the ROFR Rightholder prior to Transferring such Offered Units to the proposed purchaser.

(c) **Offer Notice.**

(i) The Offering Member shall, within five (5) Business Days of receipt of the Transfer offer, give written notice (the “**Offer Notice**”) to the ROFR Rightholder stating that it has received a bona fide offer for a Transfer of its Units (or applicable Unit Equivalents) and specifying: (1) the number of Offered Units to be Transferred by the Offering Member; (2) the proposed date, time, and location of the closing of the Transfer, which shall not be less than 60 (sixty) days from the date of the Offer Notice; (3) the purchase price per Offered Unit (which shall be payable solely in cash) and the other material terms and conditions of the Transfer; and (4) the name of the Person who has offered to purchase such Offered Units.

(ii) The Offer Notice shall constitute the Offering Member’s offer to Transfer the Offered Units to ROFR Rightholder, which offer shall be irrevocable until the end of the ROFR Option Period described in Section 8.5(d)(ii).

(iii) By delivering the Offer Notice, the Offering Member represents and warrants to the ROFR Rightholder that: (1) the Offering Member has full right, title, and interest in and to the Offered Units; (2) the Offering Member has all the necessary power and authority and has taken all necessary action to Transfer such Offered Units as contemplated by this Section 8.5; and (3) the Offered Units are free and clear of any and all liens other than those arising as a result of or under the terms of this Agreement.

(d) **Exercise of Right of First Refusal.**

(i) Upon receipt of the Offer Notice, the ROFR Rightholder shall have the right to purchase no less than all of the Offered Units.

(ii) The ROFR Rightholder may exercise its right to purchase the Offered Units by delivering a written notice (a “**ROFR Exercise Notice**”) to the Offering Member within fifteen (15) Business Days following the receipt of the Offer Notice (such period, the “**ROFR Option Period**”). The ROFR Exercise Notice shall state the ROFR Rightholder’s intention to purchase all of the Offered Units on the terms and at the purchase price set forth in the Offer Notice. Any ROFR Exercise Notice shall be binding upon delivery and irrevocable by the ROFR Rightholder.

(iii) If the ROFR Rightholder does not deliver a ROFR Exercise Notice by the end of the ROFR Option Period, the ROFR Rightholder will be deemed to have waived its rights of first refusal under this Section 8.5 with respect to the Transfer of Offered Units, but shall not affect their respective rights with respect to any future Transfers.

(e) **Consummation of Sale.** If the ROFR Rightholder exercises its rights to purchase the Offered Units, then the Offering Member shall sell, and the ROFR Rightholder shall purchase such Offered Units within sixty (60) days following the expiration of the ROFR Option Period (which period may be extended for a reasonable time not to exceed ninety (90) days to the extent reasonably necessary to obtain required approvals or consents from any Governmental Authority). The Offering Member shall take all actions reasonably necessary to consummate the sale contemplated by this Section 8.5(e), including, without limitation, entering into agreements and delivering certificates and instruments and consents as the ROFR Rightholder may deem necessary or appropriate. At the closing of any sale and purchase pursuant to this Section 8.5(e),

the Offering Member shall deliver to the ROFR Rightholder certificates (if any) representing the Offered Units to be sold, free and clear of any liens or encumbrances (other than those contained in this Agreement), accompanied by evidence of transfer and all necessary transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from the ROFR Rightholder by certified or official bank check or by wire transfer of immediately available funds.

(f) **Sale to Proposed Purchaser.** If the ROFR Rightholder does not elect in the aggregate to purchase the Offered Units, then the Offering Member may Transfer all of such Offered Units, at a price per Offered Unit not less than specified in the Offer Notice and on other terms and conditions which are not materially more favorable in the aggregate to the proposed purchaser than those specified in the Offer Notice, but only if such Transfer occurs within ninety (90) days after expiration of the ROFR Option Period. Any Offered Units not Transferred within such 90-day period will be subject to the provisions of this Section 8.5 upon subsequent Transfer.

ARTICLE IX CESSATION OF MEMBERSHIP

9.1 **Cessation Events.** A Person who is a Member shall cease to be a Member with respect to a particular Series only upon the occurrence of one of the following events:

- (a) The sale, assignment or transfer as permitted under this Agreement or by operation of law of the Member's entire Interest associated with such Series. A pledge or hypothecation as permitted under this Agreement shall not result in the cessation of Membership.
- (b) The occurrence of an Event of Bankruptcy with respect to the Member.
- (c) In the case of an individual Member, the Member's death.
- (d) In the case of an individual Member, the adjudication by a court that the Member is incompetent to manage his person or property.
- (e) In the case of a Member that is acting as a Member by virtue of being the trustee of a trust, the termination of the trust.
- (f) In the case of a Member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the Member.
- (g) In the case of a Member that is a corporation, the dissolution of the Member, the revocation of its charter, or the suspension of its right to conduct business by the jurisdiction of its incorporation unless within 30 days after such dissolution or the corporation's actual notice of the revocation or suspension, the dissolution is revoked or the corporation's charter or right to do business is reinstated.
- (h) The entry by any court of an order to charge the Interest of the Member associated with such Series.
- (i) As provided in Section 1.8(c), and 5.1(d)(e)(f).

9.2 **No Voluntary Withdrawal.** A Member is not entitled to withdraw voluntarily from the LLC.

9.3 **Deceased, Incompetent, Bankrupt, or Dissolved Members.** The personal representative, executor, administrator, guardian, conservator or other legal representative of a deceased individual Member or of an individual Member who has been adjudicated incompetent may exercise the rights of such former Member for the purpose of administration of such deceased Member's estate or such incompetent Member's property. The beneficiaries and heirs of any deceased Member who are not already Members shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. Upon the occurrence of an Event of Bankruptcy with respect to a Member the legal representative of such former Member may exercise the rights of such former Member for the purpose of administration of such former Member's estate or such former Member's property. If a Member who is a Person other than an individual is dissolved, the legal representative or successor of such Person may exercise the rights of the former Member pending liquidation. The distributees of such Person shall become assignees with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3. A purchaser of a Member's Interest at a foreclosure sale shall be an assignee with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only as provided in Section 8.3.

9.4 **Consequences of Cessation of Membership.** If a Person ceases to be a Member with respect to a particular Series as provided in Section 9.1 above, such former Member (or such former Member's successor in interest) shall continue to be liable for all of the obligations of the former Member to the LLC and any Series in which the former Member is associated with, including any obligation to make Capital Contributions. Such former Member (or such former Member's successor in interest) shall be an assignee with respect to the Interest associated with such Series that such Person continues to own, if any, with only the rights and subject to the restrictions, conditions and limitations described in Section 8.2 above and the Act and shall become a Member only after complying with the provisions of Section 8.3.

9.5 **Call Right.**

(a) **Right to Purchase.** Notwithstanding any other provisions of this agreement, at any time on or after the Effective Date (the "**Call Commencement Date**"), the LLC has the continuing option and right (the "**Call Right**"), but not the obligation, to cause any Member or its transferee (the "**Call Seller**") to sell all of its Units (the "**Call Units**") to the LLC in accordance with this Section 9.5. The LLC may exercise the Call Right in its sole discretion.

(b) **Call Right Procedures; Purchase Price.**

(i) The LLC may exercise the Call Right by delivering to the Call Seller a written notice (the "**Call Exercise Notice**") stating its election to purchase the Call Units from the Call Seller for a specified purchase price (the "**Call Purchase Price**"). The Call Purchase Price will be equal to the fair market value of the Call Units; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest

of the LLC or a Series then the purchase price will be equal to, at the Manager's election, (1) the fair market value of the Call Units, (2) the balance of the Call Seller's Capital Account, or (3) the investment amount specified in the Call Seller's Subscription Agreement. The Manager may select the smallest of the amounts specified in the preceding sentence, but is not required to do so.

(ii) For purposes of this Section 9.5, the term "**fair market value**" means the fair market value of the Call Units as of the date of the Call Exercise Notice, as determined by the Manager, taking into consideration such factors as the Manager deems appropriate. The phrase "**contrary to the interest of the LLC or a Series**" includes, but is not limited to, the following acts: (1) demanding cash or distributions not authorized by this agreement; (2) interfering with or attempting to improperly influence the Manager's exercise of its authority to manage the LLC, any Series, or any investment; or (3) making any statement to any Person concerning the Manager, the LLC, any Series, any investment made by a Series, or any other matter in connection with the foregoing which, if taken at face value by a theoretical potential investor would tend to dissuade such an investor from contributing capital to the LLC or a Series.

(iii) Upon the closing of any purchase consummated pursuant to the Call Right, the Call Seller will be deemed to represent and warrant to the LLC that (1) it has full right, title, and interest in and to the Call Units, (2) it has all the necessary power and authority and has taken all necessary action to sell the Call Units as contemplated by this Section 9.5, and (3) the Call Units are free and clear of any and all liens, pledges, security interests, options, rights of first offer, encumbrances, or other restrictions or limitations.

(c) **Closing.** The closing of the purchase of the Call Units pursuant to the Call Right (the "**Call Closing**") shall take place no later than thirty (30) days following the delivery of the Call Exercise Notice. The LLC shall give the Call Seller at least one (1) Business Days' written notice of the date of closing (the "**Call Right Closing Date**"). At the Call Closing on the Call Right Closing Date:

(i) The LLC shall pay the Call Purchase Price to the Call Seller by check, certified or official bank check, ACH, or by wire transfer of immediately available funds; provided, however, that if the Manager determines, in its sole discretion, that the Call Seller is acting in a manner contrary to the interest of the LLC or a Series then the Call Purchase Price shall be payable to the Call Purchase Seller in one or more installments in accordance with a schedule to be established by the Manager, which schedule must provide that all installments will be due not more than thirty-six (36) months from the Call Right Closing Date.

(ii) The Call Seller shall deliver to the LLC a certificate or certificates (if any) representing the Call Units to be sold, accompanied by an assignment of any certificate or certificates to the LLC. If the Call Units are not certificated, the LLC shall transfer the Call Units on its own records.

(d) **Cooperation.** The Call Seller shall take all actions as may be reasonably necessary to consummate the sale contemplated by the Call Right, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate to consummate the sale.

ARTICLE X DISSOLUTION, TERMINATION, WINDING UP AND LIQUIDATING DISTRIBUTIONS

10.1 **Dissolution of the LLC.** The LLC shall dissolve only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The entry of a decree of judicial dissolution of the LLC or the administrative dissolution of the LLC under the Act.

10.2 **Termination of a Series.** Except as provided otherwise in a Series Agreement, a Series shall be terminated only upon the first to occur of any of the following events:

- (a) The written consent of the Manager.
- (b) The dissolution of the LLC.
- (c) The entry of a decree of judicial termination of the Series under the Act.

The termination and winding up of a Series will not, in it of itself, cause a dissolution of the LLC or the termination of any other Series. The termination of a Series will not affect the limitation on liabilities of the Series or any other Series provided by this Agreement, the Series Agreements, the Certificate and the Act.

10.3 **Winding Up.** Upon the termination of a Series, the Manager, or, if there is no Manager, a liquidating trustee appointed by a majority in Interest of the Members associated with such Series, shall proceed to wind up the affairs of the Series, as the case may be, as provided in this Agreement, the Series Agreement and the Act. Upon the termination of a Series, an accounting shall be made by the Series' independent accountants of the accounts of the Series and of the Series' assets, liabilities and operations, from the date of the last previous accounting until the date of termination. The Manager (or the liquidating trustee) shall dispose of and convey the assets of the Series as promptly as reasonably possible following termination as is consistent with obtaining the fair market value for the assets of the Series. Until final distribution, the Manager (or the liquidating trustee) shall continue to operate the assets with all of the power and authority of the Manager. The costs of the liquidation shall be borne as an expense of the Series.

(a) **Liquidating Distributions.** A Series' assets and proceeds from the disposition of the Series' assets shall be distributed as specified on Exhibit A of the Series Agreement.

(b) To the extent a terminated Series is classified as a partnership for federal tax purposes, the Manager (or the liquidating trustee) shall use its reasonable efforts to comply with the timing requirements of Treasury Regulations Section 1.704-1(b)(2)(ii)(g) and make the distributions pursuant to Subsection (b) by the end of the taxable year in which the Series liquidates (within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)) or, if later, within 90

days following such liquidation, but will not be bound to do so or liable in any way to any Person for failure to do so.

(c) Distributions pursuant to Section 10.4 and Exhibit A of the Series Agreement may be made to a trust established by the Members associated with such Series or the Series for the benefit of the Unitholders associated with such Series for the purposes of liquidating the Series' assets, collecting amounts owed to the Series, and paying liabilities or obligations of the Series. The assets of any such trust shall be distributed to the Unitholders from time to time, in the reasonable discretion of the trustee of the liquidating trust, in the same proportions as the amount distributed to such trust by the Series otherwise would have been distributed to the Unitholders pursuant to this Agreement.

10.4 **No Deficit Restoration Obligation.** Notwithstanding anything to the contrary in this Agreement, upon liquidation, if any Unitholder has a deficit Capital Account with respect to a Series (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Unitholder shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Unitholder's Capital Account, and the negative balance of such Unitholder's Capital Account shall not be considered a debt owed by such Unitholder to the LLC, to the Series or to any other Person for any purpose whatsoever.

ARTICLE XI BOOKS AND RECORDS; TAX MATTERS

11.1 **Books and Records.** The LLC shall keep adequate books and records, which shall set forth an accurate account of all transactions of each Series, including the Agreed Value of property contributed or to be contributed to the capital of the Series. The books and records, together with a copy of this Agreement, each Series Agreement and the Certificate will at all times be maintained at the principal place of business of the LLC and the applicable Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the records maintained for each Series must account for the assets associated with the Series separately from the other assets of the LLC or of any other Series. Upon reasonable written request, each Member associated with a Series or its designated representative will have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the books and records of the Series for any purpose reasonably related to the Member's interest with respect to the Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the Manager may, to the maximum extent permitted by applicable law, keep confidential and withhold from the Members associated with a Series any information or documents the disclosure or production of which the Manager believes, in his sole and absolute discretion, is not in the best interest of the LLC or the Series or is adverse to the interests of the LLC or the Series or which the LLC or the Manager is required by law or by an agreement with any Person to keep confidential or withhold. Such information or documentation may include, without limitation, the financial information to which Members may otherwise be entitled under Section 11.3 herein. The LLC and the Manager shall keep confidential each Member's name, address, email address, telephone number, investment amount, Subscription Agreement, and other personal data (the "**Member Confidential Information**"), and shall not disclose the Member Confidential Information to other Members. Pursuant to Section 18-305(g)

of the Act, the Members will only have such rights to obtain information relating to the LLC or its investments, or access to the books and records of the LLC and each Series, as expressly provided in this Agreement and only as the information pertains to an individual Member's own interest. Disclosure of Member Confidential Information in violation of this section will be deemed not to be in the best interest of the LLC or any Series.

11.2 Bank and Financial Accounts. The funds of a Series may be deposited in the name of the Series or in the name of the LLC as the Manager may determine in his sole discretion in such bank accounts or investment accounts as may be determined by the Manager and shall be withdrawn solely on the signature of those Persons authorized by the Manager as evidenced by written resolution. All funds and other assets of a Series will be accounted for as the property of the Series in the books and records of the LLC and the Series, irrespective of the name in which legal title to the assets of the Series is held.

11.3 Taxable Year; Accounting Methods; . To the extent a Series is not treated as disregarded as an entity separate from its owner for federal income tax purposes, the Series shall use the Fiscal Year as its taxable year. The Series shall report its income for income tax purposes using the method of accounting as may be selected from time to time by the Manager and permitted by law.

11.4 Tax Returns and Information. The Manager shall cause the preparation and the timely filing with necessary extensions of all applicable federal and applicable state tax returns of each Series. The tax information necessary to enable each Member to prepare its state, federal, local and foreign income tax returns shall be delivered to each Member within a reasonable period after the end of each Fiscal Year but generally not later than September 15th.

11.5 Tax Elections. Except as otherwise provided in this Agreement or a Series Agreement, the Manager shall cause each Series to make any and all elections for federal, state and local tax purposes including, without limitation, any election to adjust the basis of Series' assets pursuant to Code Sections 734(b), 743(b), 754 and 755 or comparable provisions of state or local law, in connection with transfers of Interests associated with a Series and distributions from a Series.

11.6 Tax Audits. With respect to any Series classified as a partnership for federal income tax purposes, for taxable years beginning before January 1, 2018 and to which the Revised Partnership Audit Procedures are not applicable, the Manager shall appoint a Member associated with a Series as the "**tax matters partner**" of such Series under Code § 6231(a)(7) and for taxable years to which the Revised Partnership Audit Procedures are applicable, the Manager shall appoint a Person to be or act as (in the Manager's sole discretion) the "**partnership representative**" of the Series under Code § 6223(a) (as amended by the Revised Partnership Audit Procedures) (the tax matters partner or partnership representative, as applicable, the "**Tax Matters Member**"). The Tax Matters Member of a Series shall represent the Series in all administrative and judicial proceedings involving federal, state or local income and other tax matters (collectively, "**tax matters**") as the Tax Matters Member. Subject to the first obtaining approval of a majority in Interest of the Members associated with the Series, the Tax Matters Member is authorized to contest or continue to contest any income tax deficiencies assessed or proposed to be assessed by any income taxing authority on such Series. Each Member associated with a Series shall cooperate with the Tax

Matters Member of such Series and do or refrain from doing any or all things reasonably requested by the Tax Matters Member with respect to the conduct of any examinations or proceedings involving tax matters. Each Series will indemnify and reimburse the Tax Matters Member for all expenses (including legal and accounting fees) incurred as Tax Matters Member pursuant to this Section, including (but not limited to) any expenses incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Series or the Members associated with such Series attributable to their Interests associated with such Series to the extent authorized by the Manager. The Members associated with a Series shall be kept informed of, and given an opportunity to participate in a non-binding manner in, all such tax matters of such Series which the Tax Matters Partner reasonably deems to be material. The Manager of a Series may remove any Member serving as the tax matters partner for such Series and appoint another Member to serve in that capacity or remove any Person serving as the partnership representative of such Series and appoint another Person to serve in that capacity at any time. If a Series pays an imputed underpayment pursuant to Code § 6223 (as amended by the Revised Partnership Audit Procedures), to the extent possible, the portion thereof attributable to a Unitholder may (within the discretion of the Manager) be treated as a withholding tax with respect to such Unitholder under Section 3.2. To the extent such portion of an imputed underpayment cannot be withheld from a current distribution, the Unitholder (or former Unitholder) shall be liable to the Series for the amount that cannot be so offset. The Series (in the discretion of the Manager) may elect the alternative set forth in Code § 6226 (as amended by the Revised Partnership Audit Procedures) instead of paying an imputed underpayment.

ARTICLE XII MISCELLANEOUS

12.1 **Notices.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the Person or to an officer of the Person to whom the same is directed, or sent by regular, registered or certified United States mail, or by facsimile transmission or by electronic mail or by private mail or courier service, addressed as follows: if to the LLC or a Series, to its principal office address, or to such other address as may be specified from time to time by notice to the Members; if to a Unitholder or Manager, to the address set forth on the Information Exhibit attached to the applicable Series Agreement, or to such other address as the Unitholder or Manager may specify from time to time by notice to the Unitholders or Manager. Any such notice shall be deemed to be delivered, given, and received for all purposes (i) as of the date of actual receipt if delivered personally or if sent by regular mail, facsimile transmission, electronic mail or by private mail or courier service, or (ii) two (2) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified United States mail, postage and charges prepaid, return receipt requested.

12.2 **Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legatees, legal representatives, successors, transferees, and assigns.

12.3 **Construction.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party to this Agreement. No provision of this Agreement is to be interpreted as a penalty upon, or a forfeiture

by, any party to this Agreement. The parties acknowledge that each party to this Agreement has shared equally in the drafting and construction of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party hereto than another.

12.4 Entire Agreement; No Oral Limited Liability Company Agreements or Series Agreements; Amendments to the Limited Liability Company Agreement or Series Agreements. This Agreement, the Series Agreements and the Subscription Agreements constitute the entire agreement among the parties with respect to the affairs of the LLC and any Series, and supersedes all prior agreements and understandings, whether oral or written. The LLC shall have no oral operating agreements and no Series shall have any oral Series Agreement. Except as otherwise provided in this Agreement, this Agreement and any Series Agreement may be amended only in writing by the Manager. Provided, however, that (i) no such Amendment by the Manager shall be effective to the extent that such amendment has a Material Adverse Effect upon one or more Members (Excepting Manager's broad authority as provided in Section 5.1 above) and (ii) no amendment of any provision of this Agreement shall, without the approval of the affected Member: (1) affect the limited liability of such Member; (2) increase such Member's obligation to make a Capital Contribution; or (3) amend this Section 12.4. For purposes of the preceding sentence, "**Material Adverse Effect**" shall mean any modification of the relative rights to distributions from a Series. Without limiting the generality of the foregoing: an amendment which has a proportionate effect on all Members (or in the case of a redemption of Interests or issuance of additional Interests, an amendment which has a proportionate effect on all Members immediately after such redemption or issuance) with respect to their rights to distributions shall be deemed to not have a Material Adverse Effect on any Member.

12.5 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the LLC or any Series.

12.6 Arbitration.

(a) ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION (OR AT ANY TIME OR AT ANY OTHER PLACE OR UNDER ANY OTHER FORM OF ARBITRATION MUTUALLY ACCEPTABLE TO THE PARTIES SO INVOLVED). ANY AWARD RENDERED SHALL BE FINAL AND CONCLUSIVE UPON THE PARTIES AND A JUDGMENT THEREON MAY BE ENTERED IN THE HIGHEST COURT OF THE FORUM, STATE OR FEDERAL, HAVING JURISDICTION. THE EXPENSES OF THE ARBITRATION SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION, PROVIDED THAT EACH PARTY SHALL PAY FOR AND BEAR THE COST OF ITS OWN EXPERTS, EVIDENCE AND COUNSEL FEES, EXCEPT THAT IN THE DISCRETION OF THE ARBITRATOR, ANY AWARD MAY INCLUDE THE COST OF A PARTY'S COUNSEL IF THE ARBITRATOR EXPRESSLY DETERMINES THAT THE PARTY AGAINST WHOM SUCH AWARD IS ENTERED HAS CAUSED THE DISPUTE, CONTROVERSY, OR CLAIM TO BE SUBMITTED TO ARBITRATION AS A DILATORY TACTIC.

(b) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A MEMBER'S RIGHTS TO INITIATE OR PURSUE ARBITRATION UNDER THIS AGREEMENT SHALL IMMEDIATELY TERMINATE UPON THE REMOVAL OF SUCH MEMBER FOR ANY REASON AS PROVIDED FOR UNDER SECTION 5.1 (INCLUDING REMOVAL BY EXERCISE OF THE LLC'S CALL RIGHT UNDER SECTION 9.5). ONLY THOSE MEMBERS WHO HAVE PAID THEIR INITIAL CAPITAL CONTRIBUTIONS AS REQUIRED BY THEIR SUBSCRIPTION AGREEMENTS WILL BE CONSIDERED MEMBERS FOR PURPOSES OF BEING ENTITLED TO INITIATE AN ARBITRATION. THE MANAGER MAY SELECT A CERTIFIED PUBLIC ACCOUNTANT TO DETERMINE WHETHER A PARTY HAS PAID ITS INITIAL CAPITAL CONTRIBUTION, AND THE DETERMINATION OF THAT ACCOUNTANT WILL BE DEEMED TO CONCLUSIVELY ESTABLISH WHETHER THAT PAYMENT WAS MADE. DISPUTES CONCERNING WHETHER A PARTY WHO INITIATES AN ARBITRATION HAS STANDING TO DO SO AS A MEMBER SHALL NOT BE DETERMINED BY THE ARBITRATOR BUT RATHER BY A COURT OF COMPETENT JURISDICTION.

12.7 **Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

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

12.9 **Additional Documents.** Each Member, upon the request of the LLC, agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

12.10 **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons indicated thereby may require.

12.11 **Governing Law; Consent to Jurisdiction.** The laws of the State of Delaware shall govern the validity of this Agreement, the construction and interpretation of its terms, and organization and internal affairs of the LLC and the limited liability of the Members. Each party to this Agreement hereby irrevocably consents to the personal jurisdiction of the state and federal courts sitting in the State of Delaware with respect to the enforcement of an arbitrator's ruling under Section 12.6 or emergency judicial relief.

12.12 **Waiver of Action for Partition.** Each of the Members irrevocably waives any right that it may have to maintain any action for partition with respect to any of the assets of the LLC.

12.13 **Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronic mail, and such facsimile or electronic mail execution shall have the full force and effect of an original signature. All fully executed counterparts hereof, whether original executions or facsimile executions or electronic mail executions or a combination, shall be construed together and shall constitute one and the same agreement.

12.14 Power of Attorney. Each Unitholder associated with a Series hereby irrevocably makes, constitutes and appoints the Manager associated with such Series, with full power of substitution, so long as the Manager is acting in such capacity (and any successor Manager thereof so long as such Manager is acting in such capacity), its true and lawful attorney, in such Unitholder's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the LLC or such Series:

(a) all documents which the Manager deems necessary or desirable to effect the dissolution and termination of the LLC or such Series which dissolution and termination shall have been authorized in accordance with the terms of this Agreement;

(b) all such other instruments, documents and certificates which may from time to time be required by the laws of the State or any other jurisdiction in which the LLC or such Series shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the LLC or such Series; and

(c) all instruments, documents and certificates which the Manager deems necessary or desirable in connection with the conversion or reorganization of the LLC into another form of entity.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency or dissolution of each granting Unitholder and shall survive the delivery of any assignment by the Unitholder of the whole or any portion of its Interest. Each Unitholder associated with a Series hereby releases the Manager associated with such Series from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by the Manager pursuant to which the Manager purports to act as the attorney-in-fact for one or more Unitholders, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 12.14.

12.15 Title to Property. The title to all real or personal property (or interests therein) now or hereafter acquired by the LLC or any Series shall be held by and vested in the LLC or such Series, and not by or in any Member, individually.

12.16 Time of the Essence. Time is of the essence with respect to each and every term and provision of this Agreement.

12.17 Waivers. No consent or waiver, express or implied, by any party with respect to any breach or default in the performance by any other party of its obligations hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder, and any failure on the part of any party to complain regarding any act of any other party which constitutes a breach of such other party's obligations hereunder or to declare any such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

12.18 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude

or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.19 **Exhibits.** The Exhibits to this Agreement, each of which is incorporated by reference, are:

EXHIBIT A: Certificate of Formation

EXHIBIT B: The Series Agreements

EXHIBIT C: Glossary of Terms

EXHIBIT D: Regulatory Allocations

IN WITNESS WHEREOF, the Members, the Manager, and the LLC have executed this Agreement the day and year indicated on the following execution page, to be effective as of the Effective Date.

Signature pages follow

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized on the date stated opposite that party's signature.

STELLAR, LLC

Date: 6/1/2023

By: 
David Engel
Managing Member

YIELD CAPITAL LLC

Date: 6/1/2023

By: Stellar, LLC, its manager
By: 
David Engel
Managing Member

Exhibit A
Certificate of Formation

See attached.

End of Exhibit A

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Exhibit B
The Series Agreements

See Attached.

End of Exhibit B

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Exhibit C

Glossary of Terms

Many of the capitalized words and phrases used in this Agreement are defined below. Some defined terms used in this Agreement are applicable to only a particular Section of this Agreement or an Exhibit and are not listed below, but are defined in the Section or Exhibit in which they are used.

“**Act**” shall mean the Delaware Uniform Limited Liability Company Act, as in effect in Delaware and set forth at 6 Delaware Code, Chapter 18, Sections 18-101 through 18-1109 (or any corresponding provisions of succeeding law).

“**Adjusted Capital Account**” means, with respect to any Unitholder, such Person’s Capital Account (as defined below) as of the end of the relevant Fiscal Year increased by any amounts which such Person is obligated to restore, or is deemed to be obligated to restore pursuant to the next to last sentences of Treasury Regulations § 1.704-2(g)(1) (share of minimum gain) and 1.704-2(i)(5) (share of member nonrecourse debt minimum gain).

“**Affiliate**” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person, (ii) any Person directly or indirectly owning or controlling 10 percent or more of any class of outstanding equity interests of such Person or of any Person which such Person directly or indirectly owns or controls 10 percent or more of any class of equity interests, (iii) any officer, director, general partner or trustee of such Person, or any Person of which such Person is an officer, director, general partner or trustee, or (iv) any Person who is an officer, director, general partner, trustee or holder of 10 percent or more of the equity interests of any Person described in clauses (i) through (iii) of this sentence.

“**Agreed Value**” shall mean with respect to any noncash asset of a Series an amount determined and adjusted in accordance with the following provisions:

- (1) The initial Agreed Value of any noncash asset acquired by a Series other than by contribution by a Unitholder shall be its adjusted basis for federal income tax purposes.
- (2) The initial Agreed Value of any noncash asset contributed to the capital of a Series by any Unitholder shall be its gross fair market value on the date of its contribution, as agreed to by the contributing Unitholder and the Series.
- (3) The Agreed Value of any noncash asset distributed from a Series to any Unitholder shall be its gross fair market value, as determined by the Manager, as of the date the noncash asset is distributed.
- (4) Unless the Manager determines that making the adjustments under this paragraph (d) are not necessary to preserve the Unitholders’ economic interests in a Series, the Agreed Values of all noncash assets of a Series, regardless of how those assets were acquired, shall be adjusted from time to time to equal their gross fair market values, as determined by the Manager, as of the following times:

- (5) the acquisition of an Interest or an additional Interest associated with the Series by any new or existing Member in exchange for more than a de minimis Capital Contribution;
- (6) the distribution from the Series of more than a de minimis amount of money or other property as consideration for all or part of an Interest associated with such Series;
- (7) the liquidation of the Series within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g);
- (8) the grant of an Interest associated with the Series in the LLC (other than a de minimis Interest) as consideration for the provision of services to or for the benefit of the Series by an existing Unitholder acting in a “partner capacity” within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iii) or by a new Unitholder acting in a partner capacity or in anticipation of being a Unitholder; and
- (9) the issuance of a noncompensatory option (other than an option for a de minimis Interest) within the meaning of Treasury Regulations § 1.704-1(b)(2)(iv)(f)(5)(iv).
- (10) The Agreed Values of a Series’ noncash assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), except that Agreed Values of a Series’ noncash assets will not be adjusted under this paragraph (e) to the extent that an adjustment under paragraph (d) of this definition is made in connection with the transaction that would otherwise result in an adjustment under this definition.
- (11) If the Agreed Value of a noncash asset of a Series has been determined or adjusted pursuant to paragraph (b), (d) or (e) of this definition, such Agreed Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses (or items, if any of income, gain, expense, deduction, or loss of the Series to be allocated hereunder that are not included in the computation of Profits and Losses).

“**Agreement**” shall mean this Amended and Restated Limited Liability Company Agreement as amended from time to time.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in the City of New York are authorized or required to close.

“**Call Closing**” has the meaning stated in Section 9.5(c).

“**Call Closing Date**” has the meaning stated in Section 9.5(c)

“**Call Commencement Date**” has the meaning stated in Section 9.5(a).

“**Call Exercise Notice**” has the meaning stated in Section 9.5(b)(i).

“**Call Purchase Price**” has the meaning stated in Section 9.5(b)(i)

“**Call Right**” has the meaning stated in Section 9.5(a).

“**Call Seller**” has the meaning stated in Section 9.5(a).

“**Call Units**” has the meaning stated in Section 9.5(a).

“**Capital Account**” shall mean with respect to each Unitholder an account maintained and adjusted in accordance with the following provisions:

- (1) Each Person’s Capital Account with respect to a Series shall be increased by such Person’s Capital Contributions to such Series, such Person’s distributive share of Profits of the Series, any items in the nature of income or gain of the Series that are allocated pursuant to the Regulatory Allocations and the amount of any liabilities of the Series that are assumed by such Person or that are secured by Series property distributed to such Person.
- (2) Each Person’s Capital Account with respect to a Series shall be decreased by the amount of cash and the Agreed Value of any Series property distributed to such Person pursuant to any provision of this Agreement, such Person’s distributive share of Losses of the Series, any items in the nature of loss or deduction of the Series that are allocated pursuant to the Regulatory Allocations, and the amount of any liabilities of such Person that are assumed by the Series or that are secured by any property contributed by such Person to the Series.

If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

If the Agreed Values of a Series’ assets are adjusted pursuant to the definition of Agreed Value contained in this Agreement, the Capital Accounts of all Unitholders associated with such Series shall be adjusted simultaneously to reflect the aggregate adjustments as if the Series recognized gain or loss equal to the amount of such aggregate adjustment.

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

“**Capital Contribution**” shall mean with respect to any Member, the amount of money and the initial Agreed Value of any property (other than money) contributed to a Series with respect to the Interest of such Member associated with such Series.

“**Certificate**” shall mean the Certificate of Formation required to be filed by the LLC pursuant to the Act together with all amendments thereto, if any.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor federal revenue law.

“**Current Interest**” shall have the meaning set forth in Section 2.3.

“Default Rate” shall mean a per annum rate of return on a specified principal sum, compounded monthly, equal to the greater of (a) the Prime Rate plus 1,000 basis points, or (b) 18%, but in no event greater than the highest rate allowed by law.

“Depreciation” shall mean for each Fiscal Year of a Series or other period with respect to a particular asset of the Series, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to that asset for such Fiscal Year or other period, except that if, as of the beginning of such Fiscal Year or other period, the Agreed Value of the asset differs from its adjusted basis for federal income tax purposes, Depreciation for that asset will be an amount that bears the same ratio to its Agreed Value at the beginning of such Fiscal Year or other period as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Year or other period bears to its adjusted tax basis at the beginning of the Fiscal Year or other period; provided, however, that if the asset’s adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period is zero, Depreciation for that asset shall be determined with reference to its Agreed Value using any reasonable method selected by the Manager.

“Effective Date” shall have the meaning set forth in Section 1.1.

“Event of Bankruptcy” shall mean, with respect to any Person, the occurrence any of the events set forth in Section 18-304 of the Act.

“Second Amended and Restated Agreement” shall have the meaning set forth in the recitals.

“Fiscal Year” shall mean, as of the Effective Date, the calendar year, and, with respect to the last year of the LLC or a Series, the portion of the calendar year ending with the date of its final liquidating distributions.

“Governmental Authority” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of law), or any arbitrator, court, or tribunal of competent jurisdiction.

“Highest Designated Interest” shall have the meaning set forth in Section 2.3.

“Interest” shall mean all of the rights of each Unitholder with respect to a Series established and created under this Agreement. A Unitholder association with more than one Series will have a separate Interest in each Series. With respect to any provision of this Agreement requiring the vote, approval, consent or similar action by the Members or a group of Members with respect to any matter, unless otherwise specified, reference to a majority (or a specified percentage) in Interest of the Members or group thereof means Members holding Units constituting a majority (or specified percentage) of the Units of the Members or group of Members, determined as the date of such vote, approval, consent or action unless an earlier record date has been established for determining the Members entitled to participate in such action, in which case the determination shall be made as of the earlier record date.

“Investment Return” shall mean with respect to a Unitholder that return from Series Investments as specified in the Series Agreement commencing on the date of such Unitholder's initial Capital Contribution and applying those conventions and otherwise computed as reasonably determined by the Manager.

“LLC” shall mean YIELD CAPITAL LLC, a Delaware limited liability company.

“Manager” shall refer to the Person designated as Manager on the execution page of this Agreement and its successor until such Person shall cease to be Manager as provided herein.

“Members” shall refer collectively to Persons who own Units associated with a Series and are listed on the Information Exhibit of any Series Agreement as Members and to any other Persons who own Units associated with a Series who are admitted to the LLC as Members until such Persons have ceased to own Units associated with a Series or otherwise have ceased to be Members under the terms of this Agreement. For the avoidance of doubt, a Person can cease to be a Member associated with a particular Series because such Person no longer owns Units associated with such Series or otherwise but continue to be a Member associated with another Series. ***“Member”*** means any one of the Members.

“Member Confidential Information” has the meaning stated in Section 11.1.

“Offering Member” has the meaning set forth in Section 8.5(a).

“Offer Notice” has the meaning set forth in Section 8.5(c)(i).

“Offered Units” has the meaning set forth in Section 8.5(a)

“Percentage Interest” shall mean with respect to the Unitholder the percentage set forth opposite each such Unitholder's name on the Information Exhibit of any Series Agreement in the column labeled ***“Percentage Interest.”*** A Unitholder's Percentage Interest associated with a Series shall be a percentage equal to a fraction the numerator of which shall be the number of Units associated with such Series held by such Unitholder and the denominator of which shall be the total number of Units associated with such Series held by all Unitholders.

“Person” shall mean any natural person, partnership, trust, estate, association, limited liability company, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative capacity.

“Prime Rate” as of a particular date shall mean the prime rate of interest as published on that date in the Wall Street Journal, and generally defined therein as ***“the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.”*** If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal was published.

“Profits” and ***“Losses”*** shall mean with respect to a Series, for each Fiscal Year or other period of such Series, an amount equal to the Series' taxable income or loss for such year or period, determined in accordance with Code § 703(a) (for this purpose, all items of income, gain, loss or

deduction required to be stated separately pursuant to Code § 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

- (1) Any income of the Series that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;
- (2) Any expenditures of the Series described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;
- (3) If the Agreed Value of any asset of the Series is adjusted under paragraphs (c) or (d) of the definition of “**Agreed Value**,” then for purposes of computing Profits and Losses for the Fiscal Year of such adjustment, the amount of that adjustment will be taken into account as income, gain, loss or deduction, as the case may be, as if the asset had been sold for an amount equal to its adjusted Agreed Value as provided by Treasury Regulations § 1.704-1(b)(2)(iv)(f)(2);
- (4) Gain or loss recognized for federal income tax purposes from the disposition of assets of the Series shall be computed by reference to the Agreed Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Agreed Value;
- (5) Depreciation shall be used in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing the Series’ taxable income or loss;
- (6) To the extent that Treasury Regulations § 1.704-1(b)(2)(iv)(m)(4) requires an adjustment made to the adjusted tax basis of any of the Series’ assets pursuant to Code § 734(b) to be taken into account in determining Capital Account balances as a result of a distribution made other than in liquidation of a Unitholder’s Interest, the amount of such adjustment shall be treated as a taxable gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Profits and Losses; and
- (7) Notwithstanding any other provision of this definition, no items of income, gain, expense, deduction or loss that are specifically allocated under the Regulatory Allocations Exhibit are to be taken into account in computing Profits or Losses, but the amounts of those items are to be determined by applying rules comparable to those provided in paragraphs (a) through (f) of this definition.

“**Regulatory Allocations**” shall mean those allocations of items of income, gain, loss or deduction of a Series set forth on the Regulatory Allocations Exhibit and designed to enable the Series to comply with the alternate test for economic effect prescribed in Treasury Regulations § 1.704-1(b)(2)(ii)(d), and the safe harbor rules for allocations attributable to nonrecourse liabilities prescribed in Treasury Regulations § 1.704-2.

“**Related Party**” shall mean (a) with respect to any individual, such individual’s spouse, any descendants (whether natural, adopted or in the process of adoption), any sibling, any ancestor, any trust more than fifty percent (50%) of the beneficial interests in which are owned by such

individuals or any of them, and any corporation, association, partnership or limited liability company more than fifty percent (50%) of the equity interests in which are owned by those above described individuals or trusts, (b) with respect to any trust, the owners of the beneficial interests of such trust, and (c) with respect to any corporation, association, partnership or limited liability company, the owners of more than fifty percent (50%) of the outstanding equity interests in such entity.

“Revised Partnership Audit Procedures” means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114 74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof) or any similar procedures established by a state, local, or non-U.S. taxing authority.

“ROFR Exercise Notice” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Option Period” has the meaning given that term in Section 8.5(d)(ii).

“ROFR Rightholders” has the meaning given that term in Section 8.5(a).

“Series Agreement” shall mean the agreement establishing a Series hereunder and described therein and entered into by the Members associated with such Series.

“Series Investment” shall have the meaning set forth in Section 1.4.

“Series” shall mean a designated series of limited liability company interests in the LLC established in accordance with this Agreement and pursuant to Section 18-215 of the Act having separate rights, powers and/or duties with respect to specified obligations.

“Subscription Agreements” shall mean each of the several Subscription Agreements between the LLC and the Members who have signed Subscription Agreements.

“Transfer” shall mean any sale, assignment, transfer, conveyance, pledge, hypothecation or other disposition, voluntarily or involuntarily, by operation of law, with or without consideration or otherwise (including, without limitation, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Interest.

“Treasury Regulations” shall mean the final and temporary Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Unitholder” shall mean a Person holding Units.

“Units” represent the basis on which Interests are denominated and the basis on which the relative rights, privileges, preferences and obligations are determined under this Agreement and the Act, and the total number and class of Units associated with a Series attributed to each Unitholder shall be the number recorded on the Information Exhibit of the Series Agreement as of the relevant time.

“Unit Equivalents” means any security or obligation that is by its terms, directly or indirectly, convertible into, exchangeable, or exercisable for Units, and any option, warrant, or other right to subscribe for, purchase, or acquire Units.

“Unpaid Investment Return” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the cumulative Investment Return of such Unitholder as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.1 and Section 3.2 as of such date. If any Interest represented is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unpaid Investment Return of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

“Unreturned Capital” shall mean with respect to a Unitholder on any date the excess, if any, of (i) the aggregate Capital Contributions of such Person with respect to such Person’s Interest as of such date, over (ii) the cumulative distributions to such Person pursuant to Section 3.3 as of such date. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Unreturned Capital of the transferor to the extent it relates to the transferred Interest. See Series Agreement which supersedes and controls.

End of Exhibit C

Exhibit D

Regulatory Allocations

This Exhibit contains special rules for the allocation of items of income, gain, loss and deduction of a Series that is classified as a partnership for federal income tax purposes that override the basic allocations of Profits and Losses in Section 4.1 of the Agreement and any allocations of Profits and Losses contained in any Series Agreement to the extent necessary to cause the overall allocations of items of income, gain, loss and deduction of a Series to have substantial economic effect pursuant to Treasury Regulations § 1.704-1(b) and shall be interpreted in light of that purpose. Subsection (a) below contains special technical definitions. Subsections (b) through (h) contain the Regulatory Allocations themselves. Subsections (i), (j) and (k) are special rules applicable in applying the Regulatory Allocations.

(a) **Definitions Applicable to Regulatory Allocations.** For purposes of the Agreement, with respect to each Series, the following terms shall have the meanings indicated:

“LLC Minimum Gain” has the meaning of **“partnership minimum gain”** set forth in Treasury Regulations § 1.704-2(d), and is generally the aggregate gain a Series would realize if it disposed of its property subject to Nonrecourse Liabilities in full satisfaction of each such liability, with such other modifications as provided in Treasury Regulations § 1.704-2(d). In the case of Nonrecourse Liabilities for which the creditor’s recourse is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of a Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Member Nonrecourse Deductions” shall mean losses, deductions or Code § 705(a)(2)(B) expenditures attributable to Member Nonrecourse Debt under the general principles applicable to **“partner nonrecourse deductions”** set forth in Treasury Regulations § 1.704-2(i)(2).

“Member Nonrecourse Debt” means any Series liability with respect to which one or more but not all of the Unitholders associated with such Series or related Persons to one or more but not all of such Unitholders bears the economic risk of loss within the meaning of Treasury Regulations § 1.752-2 as a guarantor, lender or otherwise.

“Member Nonrecourse Debt Minimum Gain” shall mean the minimum gain attributable to Member Nonrecourse Debt as determined pursuant to Treasury Regulations § 1.704-2(i)(3). In the case of Member Nonrecourse Debt for which the creditor’s recourse against the Series is not limited to particular assets of the Series, until such time as there is regulatory guidance on the determination of minimum gain with respect to such liabilities, all such liabilities of the Series shall be treated as a single liability and allocated to the Series’ assets using any reasonable basis selected by the Manager.

“Nonrecourse Deductions” shall mean losses, deductions, or Code § 705(a)(2)(B) expenditures attributable to Nonrecourse Liabilities (see Treasury Regulations § 1.704-2(b)(1)). The amount of Nonrecourse Deductions for a Fiscal Year shall be determined pursuant to Treasury Regulations § 1.704-2(c), and shall generally equal the net increase, if any, in the amount of LLC Minimum Gain for that taxable year, determined generally according to the provisions of Treasury Regulations §

1.704-2(d), reduced (but not below zero) by the aggregate distributions during the year of proceeds of Nonrecourse Liabilities that are allocable to an increase in LLC Minimum Gain, with such other modifications as provided in Treasury Regulations § 1.704-2(c).

“Nonrecourse Liability” means any liability of a Series (or portion thereof) for which no Unitholder associated with such Series bears the economic risk of loss under Treasury Regulations § 1.752-2.

“Regulatory Allocations” shall mean allocations of Nonrecourse Deductions provided in Paragraph (b) below, allocations of Member Nonrecourse Deductions provided in Paragraph (c) below, the minimum gain chargeback provided in Paragraph (d) below, the member nonrecourse debt minimum gain chargeback provided in Paragraph (e) below, the qualified income offset provided in Paragraph (f) below, the gross income allocation provided in Paragraph (g) below, and the curative allocations provided in Paragraph (h) below.

(b) **Nonrecourse Deductions.** All Nonrecourse Deductions of a Series for any Fiscal Year shall be allocated to the Unitholders associated with such Series in accordance with their Percentage Interests.

(c) **Member Nonrecourse Deductions.** All Member Nonrecourse Deductions for any Fiscal Year shall be allocated to the Unitholder who bears the economic risk of loss under Treasury Regulations § 1.752-2 with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable.

(d) **Minimum Gain Chargeback.** If there is a net decrease in LLC Minimum Gain for a Fiscal Year with respect to a Series, each Unitholder associated with such Series shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of such net decrease in LLC Minimum Gain, determined in accordance with Treasury Regulations § 1.704-2(g)(2) and the definition of LLC Minimum Gain set forth above. This provision is intended to comply with the minimum gain chargeback requirement in Treasury Regulations § 1.704-2(f) and shall be interpreted consistently therewith.

(e) **Member Nonrecourse Debt Minimum Gain Chargeback.** If there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt for any Fiscal Year, each Unitholder who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt as of the beginning of the Fiscal Year, determined in accordance with Treasury Regulations § 1.704-2(i)(5), shall be allocated items of income and gain of the Series for such year (and, if necessary, subsequent years) in an amount equal to such Unitholder’s share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations §§ 1.704-2(i)(4) and (5) and the definition of Member Nonrecourse Debt Minimum Gain set forth above. This Paragraph is intended to comply with the member nonrecourse debt minimum gain chargeback requirement in Treasury Regulations § 1.704-2(i)(4) and shall be interpreted consistently therewith.

(f) **Reallocation of Losses.** Section 4.1 notwithstanding, if and to the extent that any allocation of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) of a Series to any Unitholder associated with such Series would cause a deficit in such Unitholder's Adjusted Capital Account associated with such Series or would further reduce an existing balance that is already negative, then such Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) shall be allocated to the other Unitholders associated with such Series for whom the limitation described in this Paragraph does not apply in proportion to the amounts of Losses (or items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) that otherwise would be allocated among them for that Fiscal Year. In the event that any special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses) are made pursuant to this paragraph, items of gross income of the Series and gain from subsequent periods shall be specially allocated to offset, to the extent feasible and as promptly as possible, such special allocations of Losses (and any items of expense, deduction, or loss to be allocated hereunder that are not included in the computation of Losses).

(g) **Qualified Income Offset.** In the event any Unitholder unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations §§ 1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of income and gain of a Series (consisting of a pro rata portion of each item of income, including gross income, and gain of such Series for such year) shall be allocated to such Unitholder in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any deficit in such Unitholder's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible.

(h) **Gross Income Allocation.** In the event any Unitholder has a deficit in its Adjusted Capital Account with respect to a Series at the end of any Fiscal Year, each such Unitholder shall be allocated items of gross income and gain of such Series, in the amount of such Adjusted Capital Account deficit, as quickly as possible.

(i) **Curative Allocations.** When allocating Profits and Losses under Section 4.1, such allocations shall be made so as to offset any prior allocations of gross income under Paragraph (h) above to the greatest extent possible so that overall allocations of Profits and Losses shall be made as if no such allocations of gross income occurred.

(j) **Ordering.** The allocations in this Exhibit to the extent they apply shall be made before the allocations of Profits and Losses under Section 4.1 and in the order in which they appear above.

(k) **Waiver of Minimum Gain Chargeback Provisions.** If the Manager determines that (i) either of the two minimum gain chargeback provisions contained in this Exhibit would cause a distortion in the economic arrangement among the Members, (ii) it is not expected that a Series will have sufficient other items of income and gain to correct that distortion, and (iii) the Members associated with such Series have made Capital Contributions or received net income allocations that have restored any previous Nonrecourse Deductions or Member Nonrecourse Deductions, the Manager shall have the authority, but not the obligation, after giving notice to the Members, to request on behalf of the Series the Internal Revenue Service to waive the minimum

gain chargeback or member nonrecourse debt minimum gain chargeback requirements pursuant to Treasury Regulations §§ 1.704-2(f)(4) and 1.704-2(i)(4). The Series shall pay the expenses (including attorneys' fees) incurred to apply for the waiver. The Manager shall promptly copy all Members on all correspondence to and from the Internal Revenue Service concerning the requested waiver.

(l) **Code Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any asset of a Series pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Unitholders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

End of Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH CIRCUIT COURT

Case No. 2023-CP-23-01567

FULL MOON INVESTMENTS, LLC,
STELLAR NAOMI, a series of Yield Capital,
LLC, and JOHN DAVID ENGEL,

Plaintiffs,

vs.

CAMPBELL TEAGUE, LLC, GEORGE A.
CAMPBELL, JR., ELIZABETH TEAGUE,
EMILY O'BRIAN, MOLLY CASH, and BEAU
BROGDON,

Defendants.

**DEFENDANTS' MOTION TO ALTER
OR AMEND ORDER DENYING
DEFENDANTS' MOTION TO COMPEL
ARBITRATION**

Defendants Campbell Teague, LLC, George A. Campbell, JR., Elizabeth Teague, Emily O'Brian, Molly Cash, and Beau Brogdon ("Defendants"), by and through their undersigned counsel, respectfully move the Court, pursuant to Rule 59(e), SCRCP, to reconsider, alter or amend its Order entered August 28, 2023, denying Defendants' Motion to Compel Arbitration and Stay ("Defendants' Motion to Compel Arbitration") (the "Court's Order"). This Motion is made on the following grounds:

1. ***The Court's Order does not address Defendants' argument that Defendants may enforce the arbitration clause as non-signatories. Defendants' Memorandum at pp. 9-11.***
2. ***The Court's Order does not address Defendants' argument that the arbitration panel is the proper forum to decide issues of arbitrability. Defendants' Memorandum at 14.***
3. ***The Court's Order does not address Defendants' arguments of mootness and waiver, as raised at the hearing on the Motion, regarding Plaintiffs' contention in their reply memorandum that the arbitration clause, as amended, prevents Defendants' from arbitrating these claims.***
4. ***By Order dated August 30, 2023, sole arbitrator Judge Robert N. Hunter, Jr. ruled that Soria, a series of Bell Tower, LLC, has a right to***

demand an accounting from Stellar Naomi. The Order is attached as Exhibit A to this Motion.

LEGAL STANDARD

The decision to grant or deny a Rule 59(e) motion lies within the sound discretion of the trial court. See *Pollard v. City of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). Courts have generally recognized four basic grounds upon which a motion under Rule 59(e) may be granted: (1) where the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) where newly discovered or previously unavailable evidence comes to light after the judgment; (3) where the motion is necessary to prevent manifest injustice to the moving party; or (4) where there is an intervening change in the controlling law. 11 Charles A. Wright *et al.*, *Federal Practice and Procedure* § 2810.1, at 124-27 (2d ed. 1995).

Rule 59(e) also allows parties to move for “reconsideration of issues and arguments,” and “a motion under Rule 59(e) long has been viewed as ‘motion for reconsideration’ despite the absence of those words from the rule.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “When an issue or argument has been raised to but not ruled upon by the circuit court, a party must file a Rule 59(e) motion in order to preserve it for appellate review.” *Rodriguez v. Gutierrez*, 391 S.C. 323, 330, 705 S.E.2d 94, 98 (Ct. App. 2011) (citing *Elam*, 361 S.C. at 24, 602 S.E.2d at 780). “Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented ... There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *Elam*, 361 S.C.

at 21–22, 602 S.E.2d at 778–79. Courts should “freely allow[] a motion for reconsideration” because it provides the Court with “the opportunity promptly to correct their own alleged errors.” *Id.* at 22, 602 S.E.2d at 779 (quoting *Blair v. Equifax Check Servs., Inc.*, 181 F.3d 832, 837 (7th Cir. 1999)).

ARGUMENT AND CITATION OF AUTHORITY

1. ***The Court’s Order does not address Defendants’ argument that Defendants may enforce the arbitration clause as non-signatories. Defendants’ Memorandum at pp. 9-11.***

The Order concludes that Defendants are not parties to the arbitration agreement. However, the Court did not address the argument that Defendants, even if they are non-signatories to the agreement, can compel Plaintiffs to arbitrate their claims. While it is true that arbitration is a matter of contract, overwhelming legal authority holds that a non-signatory may compel arbitration in certain circumstances. “Well-established common law principles dictate that in an appropriate case a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000). South Carolina courts have recognized that a non-signatory can enforce an arbitration provision within a contract executed by other parties. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 287-97, 733 S.E.2d 597, 599-605 (Ct. App. 2012) (reversing Circuit Court’s denial of motion to compel arbitration and discussing, with approval, that “the Fourth Circuit has recognized the right to compel a nonsignatory” and that courts are even “more inclined to compel arbitration when the person or entity to be compelled was a signatory...”).

However, the Operating Agreement is controlled by Delaware law, and Delaware law specifically recognizes a non-signatory may enforce an arbitration agreement.¹ See, e.g., *Ashall Homes Ltd. v. ROK Entertainment Group, Inc.*, 922 A.2d 1239, 1249 (Del. Ch. 2010) (holding non-signatories to investment agreement could invoke its forum selection clause because their enforcement of the arbitration clause was foreseeable by virtue of their relationship to the signatory entities as officers and directors); *McLaughlin v. McCann*, 943 A.2d 616, 627 nn. 42, 43 (Del. Ch. 2008) (recognizing signatories may not escape arbitration under equitable estoppel when non-signatories consent to arbitration, there is a close relationship between the involved entities, and the signatory's claims are intertwined with the underlying contractual obligations); *Douzinis v. American Bureau of Shipping, Inc.*, 888 A.2d 1146, 1153 (Del. Ch. 2006) (holding “[u]nder abundant authority, non-signatories are permitted to compel signatories to arbitrate disputes under a theory of equitable estoppel”).

“A party may not rely on [a] contract when it works to its advantage, and repudiate it when it works to its disadvantage.” *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 (citation omitted). This is because “[t]o allow [a plaintiff] to claim the benefit of [a] contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactments of the [FAA].” *Int’l Paper*, 206 F.3d at 418 (citation

¹ Under the FAA, arbitration provisions may be enforced by or against non-signatories under various principles if “the relevant state contract law recognizes [the principle] as a ground for enforcing contracts against third parties.” *Sanford v. Bracewell & Giuliani, LLP*, 618 F. App’x 114, 118 (3d Cir. 2015). Courts in both Delaware and South Carolina recognize that a non-signatory can be bound to an arbitration agreement in several ways, including incorporation by reference, assumption, agency, veil piercing/alter ego, and estoppel. See, e.g., *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174; *Ishimaru v. Fung*, No. CIV.A. 929, 2005 WL 2899680, at *18 (Del. Ch. Oct. 26, 2005).

omitted). Here, the Agreements containing the arbitration provisions are attached as exhibits to the Complaint, and are part of the foundation of every claim asserted by the Plaintiffs, and they seek damages and other remedies pursuant thereto. David Engel testified that Defendants provided legal work in relation to the Soria investment, which was governed by and pursuant to the Agreements containing the arbitration provisions. As a result of those Agreements, Plaintiffs raised millions of dollars. Thus, the Plaintiffs seek to directly benefit from the existence of documents containing arbitration provisions. They cannot, on the one hand, receive a benefit from those documents while, on the other, avoid the documents' requirement that such disputes be arbitrated. *See Pearson*, 400 S.C. at 297, 733 S.E.2d at 605 (reversing denial of motion to compel arbitration where, even though the plaintiff did not have an arbitration agreement with the hospital, he sought damages under multiple contracts, one of which contained an arbitration provision with another defendant, and thus the plaintiff sought a benefit under the contract containing the arbitration provision).

Notwithstanding that even non-signatory Defendants may compel arbitration, Defendant George Campbell did sign the Agreements containing the arbitration provisions. Complaint, Exs. C-D. Moreover, Plaintiffs also attached and cited to the arbitration discovery answers from Soria in the Complaint. Stating that Defendant George Campbell signed the Subscription Agreement on behalf of Soria, Plaintiffs allege Defendants are members and owners of Soria. Complaint, ¶¶30 and 31, Complaint, Exhibit D, ¶18. Based on the totality of these circumstances and evidence before the Court, the FAA requires Plaintiffs' claims be arbitrated. *See, e.g., Capano v. Lockwood*, No. CIV.A. N10C11228 WCC, 2011 WL 7063422, at *2 (Del. Super. Ct. Dec. 28, 2011)

(holding individual defendants who had an executed LLC Agreement containing an arbitration clause on behalf of their respective LLCs, and not in their individual capacities, were compelled to arbitration where the individuals controlled the actions of the LLCs); *Melendez v. Horning*, 908 N.W.2d 115, 119 (N.D. 2018) (applying Delaware law) (holding equitable estoppel compelled non-signatories to arbitrate claims under an arbitration clause in LLC operating agreement where the conduct of the non-signatories was intertwined with related signatories to the agreement); *Sanum Inv. Ltd. v. San Marco Cap. Partners LLC*, 263 F. Supp. 3d 491, 496 (D. Del. 2017) (holding “[w]here the parties to [an arbitration] clause unmistakably intend to arbitrate all controversies which might arise between them, their agreement should be applied to claims against agents or entities related to the signatories”).

2. *The Court’s Order does not address Defendants’ argument that the arbitration panel is the proper forum to decide issues of arbitrability. Defendants’ Memorandum at 14.*

Questions of arbitrability, if any, should be decided by the arbitration panel, rather than the Court. It is undisputed that Plaintiffs have agreements to arbitrate disputes related to any series of Yield Capital, including Stellar Naomi, or arising out of or in connection with any investment therein. As set forth above, Plaintiffs’ claims arise out of and directly relate to the documents containing the arbitration provisions. The American Arbitration Association (“AAA”) rules referenced in the Agreements provide that the arbitrator is to decide both the scope of his/her own jurisdiction and “any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” See AAA Rule R-7.

“By incorporating the AAA Rules into their agreement, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is

valid.” *Terminix Int’l Co., LP v. Palmer Ranch Ltd. P’ship*, 432 F.3d 1327, 1332 (11th Cir. 2005). The United States Supreme Court has held that the FAA allows parties to agree to have an arbitrator decide “whether the parties have agreed to arbitrate.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019). See also *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 65 (2010). “[T]he FAA requires [this Court] to honor that agreement” and leave any and all arbitrability issues, including the existence, validity and scope of an arbitration agreement and/or of the underlying contract, to the arbitrator. *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020).

Judge Hunter’s Arbitration Order (Exhibit A), addresses the arbitrator’s belief he has jurisdiction to determine issues of arbitrability:

At the request of the Respondent, the Arbitrator will hold this matter open for 90 days to determine ***if any matters filed in the case involving parties in privity with these parties*** will be set for arbitration as well.

Exhibit A at 9 (emphasis added). In addition to Judge Hunter’s belief he has the authority to decide these questions of arbitrability, Respondent Stellar Naomi, one of the Plaintiffs in this action, requested Judge Hunter to hold the arbitration open for such determination. *Id.* Defendants request this Court to refer all questions of arbitrability to Judge Hunter.

3. ***The Court’s Order does not address Defendants’ arguments opposing Plaintiffs’ contention in their reply memorandum that the arbitration clause, as amended, prevents Defendants from compelling arbitration of these claims.***

Plaintiffs filed a Supplemental Memorandum on August 15, 2023, wherein they raised, for the first time, the contention that Plaintiffs’ unilateral amendment to the Operating Agreement’s arbitration clause precluded the Defendants’ motion to compel arbitration. Plaintiffs argued that the 2022 and 2023 unilateral amendments to the Operating Agreement required Defendants first to prove they paid the required

“investment amounts”. Plaintiffs’ Supp. Memo. at 3-6. Specifically, they argued that Plaintiffs’ unilateral changes to the arbitration clause prevent Defendants from compelling arbitration of any claim without first showing to a court that Defendants paid the subscription fee. Plaintiffs, of course, contend that Defendants did not pay the subscription fee in cash, and that the consideration of in-kind legal work was insufficient to constitute the required investment amount. *Id.* at 4-5.

- (a) *Plaintiffs’ unilateral amendment materially affects Defendants’ rights to distribution and so is void.*

The Operating Agreement states the Manager (Plaintiff Full Moon Investments) can unilaterally change the Agreement as long as the amendment does not have a “material adverse effect” on one or more members. See Plaintiffs’ Memo., Ex. A at §12.4. The amendment requiring Defendants to show they made the required capital contribution in court before arbitration materially affects their rights to distributions. If the Manager decides to stop paying distributions to Defendants, they would have to prove they paid some investment amount before suing to recover their distributions. As a result, the amendment is void by the express terms of Section 12.4.

- (b) *Plaintiffs’ argument is moot because Soria (Defendants’ entity that invested in Stellar Naomi) filed an arbitration demand which has been ruled on by Judge Robert N. Hunter, Jr.*

Second, Plaintiffs’ contention that Defendants will have to prove they paid the investment amount is moot. Defendants, through Soria, demanded—in arbitration—an accounting of David Engel’s, Full Moon Investment’s, and Stellar Naomi’s handling of the Ondara Investment. Judge Hunter conducted a hearing on that arbitration claim, and excerpts from that hearing were filed with Defendants’ memorandum in support of the motion to compel arbitration. As a result, Plaintiffs’ contention that proving Soria paid the

prescription as a prerequisite to arbitration is moot because that issue is in arbitration. See *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (holding that “[a] moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court”); see also *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (holding that mootness arises when some event occurs making it impossible for the court to grant effectual relief). In short, Plaintiffs’ contention that Soria or its members cannot arbitrate these claims is mooted by the fact that Soria has brought an arbitration claim and Judge Hunter has now ruled.

(c) *Plaintiffs’ argument is waived because they did not raise the unilateral amendments to the arbitrator in the pending arbitration.*

Third, Plaintiffs’ contention that Defendants will have to prove they paid the investment amount is waived. In response to Soria’s arbitration demand, none of the Plaintiffs argued that Soria would first have to prove—in court—that they paid the investment amounts as a *prerequisite* to arbitration. As a result, that argument is waived. See *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 255, 569 S.E.2d 349, 355 (2002) (holding that “a party that by its conduct consents to arbitration of a dispute waives any subsequent judicial challenge to its arbitrability”). Cf., *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 338, 676 S.E.2d 139, 145 (Ct. App. 2009) (holding that a waiver is the intentional relinquishment of a known right); *Steinmetz v. Am. Media Servs., LLC*, 393 S.C. 72, 75, 709 S.E.2d 708, 709 (Ct. App. 2011) (holding that circuit courts have limited jurisdiction over arbitration awards). Where, as here, there is clear evidence of a failure to raise an argument in the proper forum (the arbitration), that argument is waived. *Id.*

4. ***By Order dated August 30, 2023, sole arbitrator Judge Robert N. Hunter, Jr. ruled that Soria, a series of Bell Tower, LLC, has a right to demand an accounting from Stellar Naomi.***

While the Arbitration Order was not issued until after the Court's Order, Judge Robert N. Hunter, Jr. found that Soria had a right to arbitrate and demand an accounting, despite allegations that Soria had not paid the subscription fee. See Exhibit A, at page 7. In his well-reasoned opinion, Judge Hunter concluded that Soria's status as a member turned on the language of the Subscription Agreement, which stated Soria was a member of Stellar Naomi upon the acceptance by the Manager (Plaintiff Full Moon Investments), not upon the payment of the subscription fee. *Id.* at 7, ¶11. As such, there is a binding order stating that Soria is a member of Stellar Naomi, entitled to compel arbitration. Defendants, the principals and members of Soria, as alleged in the Complaint, are entitled to compel arbitration of Plaintiffs' claims as well.

CONCLUSION

For the foregoing reasons, and any others the Court may deem just and proper, the Court should reconsider, alter, or amend its Order entered August 29, 2023 denying Defendants' Motion to Compel Arbitration.

s/Bruce Wallace

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ATTORNEYS FOR DEFENDANTS
CAMPBELL TEAGUE, LLC, ET AL.

September 6, 2023

**AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION
AAA Case Number 01-21-0016-6902**

Soria, a series of Belltower, LLC

Claimant

v.

Stellar Naomi, a series of Yield Capital, LLC

Respondent

INTERIM ORDER

The Claimant's claim for declaratory judgment and for an accounting coming on to be heard by the Arbitrator at a hearing held on June 12, 2023 in Greenville, N.C.. At the hearing, the Claimant was represented by Jay Anthony of Anthony Law and the Respondent was represented by Mathew S. Furman and Nicholas B. Carter of Todd & Weldy LLP. At the hearing, the principals of both parties extensively testified and were subject to cross examination, called witnesses, and provided the Arbitrator with pre and post hearing briefs in support of their positions. Biased upon the evidence presented by affidavit and the arguments of counsel, the Arbitrator makes the following findings of fact and conclusions of law in this interim order.

Procedural History

1. Plaintiff Soria is a series of Belltower, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Greenville County, South Carolina. Soria is an investment company for which Attorney George Campbell ("Campbell") serves as manager.
2. Stellar Naomi is a series of Yield Capital, LLC ("Yield Capital"), is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Greenville County, South Carolina.
3. Soria executed a Subscription Agreement executed on or about July 20, 2020. The Subscription Agreement was signed by Campbell on behalf of Soria, then signed by Engel on behalf of Full Moon for Stellar Naomi.

EXHIBIT A

4. This arbitration is authorized by contract pursuant to Sections 12.6 and 12.11 of the broad "Arbitration" clause of a Master Operating Agreement of Stella Naomi and under Rule 34 of the Commercial Rules of the American Arbitration Association. The clause reads in part as follows:

SECTION 12.6 Arbitration. ANY DISPUTE, CONTROVERSY OR CLAIM, INCLUDING WITHOUT LIMITATION ANY DISPUTES FOR WHICH A DERIVATIVE SUIT COULD OTHERWISE BE BROUGHT PURSUANT TO THE ACT, ARISING OUT OF OR IN CONNECTION WITH, OR RELATING TO, THIS AGREEMENT ANY BREACH OR ALLEGED BREACH HEREOF SHALL, UPON THE REQUEST OF ANY PARTY INVOLVED, BE SUBMITTED TO, AND SETTLED BY, ARBITRATION IN THE CITY OF GREENVILLE, STATE OF SOUTH CAROLINA, PURSUANT TO THE COMMERCIAL ARBITRATION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION , , ,

SECTION 12.11 Governing Law; Consent to Jurisdiction. The laws of the State of Delaware shall govern the validity of this Agreement, the construction and interpretation of its terms, and organization and internal affairs of the LLC and the limited liability of the Members.

5. On September 27, 2021 Soria, a series of Belltower, LLC Claimant, filed a demand for arbitration seeking an accounting and production of records from the Stellar Naomi, a series of Yield Capital, Respondent, pursuant to Section 12.6 of a Master agreement of Stellar Namoi. Subsequently Respondent filed a motion to dismiss based on lack of standing and arbitrability, which was subsequently denied by this Arbitrator by Order dated October 24, 2022. Respondent did not file a counterclaim at this time.

On March 30, 2023, Full Moon Investments, LLC et al filed a civil action against Campbell and Teague, PLLC seeking damages for professional negligence, breach of fiduciary duty and defamation involving transactions and occurrence involving the investments by Soria in the Stellar Nomi venture and management of the Spanish operation by Mr. Campbell. This matter was noted in this arbitration and the Arbitrator was made aware of the matter and that it motion to stay and transfer these issues to arbitration is pending resolution in the court presently.

On April 7, 2023, Claimant Soria filed a Motion for Summary Judgment which was subsequently denied and this matter was set for a hearing on the merits

Claimant seeks records, and/or access to records, including, but not limited to, the following: a. List of all members of Stellar Naomi, with contact information; b. List of all company assets; c. All financial documents for the company; and d. Bank statements for the last twenty-four (24) months.

The claims for relief of this matter are dependent on whether Soria is or was a member of Stellar Naomi which is a question of law and the scope of accounting due is provided for in the agreements between the parties. Based upon the agreements between the parties and evidence produced at the hearing the arbitrator makes the following findings of facts:

Series Agreement of Stellar Naomi provides that the Master Operating Agreement of Yield Capital controls the affairs of Stellar Naomi unless contradicted by the Series Agreement.

6. Sections 11.1 , 11.2, and 11.3 of the Master Operating Agreement read as follows:

Section 11.1 Books and Records. The LLC shall keep adequate books and records, which shall set forth an accurate account of all transactions of each Series, including the Agreed Value of property contributed or to be contributed to the capital of the Series. The books and records, together with a copy of this Agreement, each Series Agreement and the Certificate will at all times be maintained at the principal place of business of the LLC and the applicable Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the records maintained for each Series must account for the assets associated with the Series separately from the other assets of the LLC or of any other Series. Upon reasonable written request, each Member associated with a Series or its designated representative will have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the books and records of the Series for any purpose reasonably related to the Member's interest with respect to the Series. Notwithstanding any provision of this Agreement or any Series Agreement to the contrary, the Manager may, to the maximum extent permitted by applicable law, keep confidential from the Members associated with a Series any information the disclosure of which the Manager reasonably believes is not in the best interest of the LLC or the Series or is adverse to the interests of the LLC or the Series or which the LLC or the Manager is required by law or by an agreement with any Person to keep confidential. Pursuant to Section 18-305(g) of the Act, the Members will only have such rights to obtain information relating to the LLC or its investments, or access to the books and records and each Series, as expressly provided in this Agreement.

SECTION 11.2 Bank and Financial Accounts. The funds of a Series may be deposited in the name of the Series or in the name of the LLC as the Manager may determine in his sole discretion in such bank accounts or investment accounts as may be determined by the Manager and shall be withdrawn solely on the signature of those Persons authorized by the Manager as evidenced by written resolution. All funds and other assets of a Series will be accounted for

as the property of the Series in the books and records of the LLC and the Series, irrespective of the name in which legal title to the assets of the Series is held.

SECTION 11.3 Taxable Year; Accounting Methods; Annual Financial Statements. To the extent a Series is not treated as disregarded as an entity separate from its owner for federal income tax purposes, the Series shall use the Fiscal Year as its taxable year. The Series shall report its income for income tax purposes using the method of accounting as may be selected from time to time by the Manager and permitted by law. Within a reasonable period after the end of each Fiscal Year, each Member associated with a Series shall be furnished with respect to such Series annual financial statements containing a balance sheet as of the end of such Fiscal Year and income statement for the Fiscal Year then ended, which financial statements, if prepared in accordance with generally accepted accounting principles, shall also include supplementary statements prepared pursuant to the Capital Account accounting methods prescribed by this Agreement and Treasury Regulations § 1.704-1(b). The LLC shall provide such financial statements within one hundred twenty (120) days after the end of the Fiscal Year.

SECTION 11.4 Tax Returns and Information. The Manager shall cause the preparation and the timely filing of all applicable federal and applicable state tax returns of each Series. The tax information necessary to enable each Member to prepare its state, federal, local and foreign income tax returns shall be delivered to each Member within a reasonable period after the end of each Fiscal Year.

7. Full Moon Investments, LLC ("Full Moon"), is the manager for Stellar Naomi, and has been from Stellar Naomi's inception. David Engel ("Engel") is the managing member of Full Moon Investments, LLC ("Full Moon"). Full Moon,
8. In 2020, Engel through Full Moon sought to purchase assets of Aleia Roses in Soria, Spain on behalf of Respondent Stella Naomi. Alexia Roses had a large greenhouse operation which grew roses for marketing. The business plan included converting the rose plantation into a medical cannabis operation.
9. During the beginning of the year 2020 Mr. Campbell and his firm had represented Mr. Engel and some of his investment companies in drafting instruments and other services for his enterprises. Prior to 2020 Mr. Campbell and his legal associates and other clients had invested capital funds in Mr. Engles other enterprises and received interests in some other projects structured in a manner similar to that of Stellar Naomi.
10. Mr. Engle and the Stellar Naomi enterprise needed a manager to attend to the project in Spain. Mr. Campbell was then trusted with the management of the project by Mr. Engle and sent to Spain. Mr. Campbell is fluent in Spanish and had a generous compensatory agreement.

11. On or about the same time this employment agreement was agreed to Mr. Campbell representing Soria, was offered a subscription agreement to purchase a share of Stellar. Mr. Campbell offered his legal associates a partial ownership in this share and two of his employees, Campbell's associates sent a combined total of \$ 30,000.00 for this purchase. In addition, the Campbell Teague law firm forgave outstanding indebtedness for their legal work for Stellar Naomi in an unliquidated total amount. Soria, contends the total of these amounts, in addition to his benefits under the compensation agreement would equal or exceed the subscription amount needed for \$150,000.00.
12. In July of 2020, Soria was provided with a Subscription Agreement "For an Equity Interest in Stellar Naomi." The Subscription Agreement provided it was "subject to acceptance by Full Moon Investments, LLC" as the manager of Stellar Naomi. It further provided that the subscriber—here, Soria—would be responsible for paying a subscription amount. The Subscription Agreement provided it would not be deemed accepted by Stellar Naomi "until and unless the acceptance at the foot hereof shall have been executed by the Manager" and the Manager "reserve[d] the right to reject for any reason or no reason this subscription in whole or in part." Additional language provided that the subscription could be rejected at any time prior to acceptance by the Manager but once it was accepted, it was binding upon the subscriber. The Subscription Agreement was signed by Campbell on behalf of Soria, then signed by Engel on behalf of Full Moon for Stellar Naomi.
13. After the signing of the agreement, the parties had several business disputes between the parties which are not relevant to the legal question of whether Soria was at the time David Engle on behalf of Stella Naomi signed the subscription agreement accepting Soria as a member of the LLC.
14. Post-signing of the Subscription Agreement, Soria received an investor update, a K-1 form from Stellar Naomi's accountant documenting Soria's interest in the company and received distributions from Stellar Naomi.

Based upon the foregoing findings of fact, the Arbitrator makes the following conclusions of law.

1. Based upon the foregoing factual findings and the language of the subscription agreement and Master Operating Agreement. Soria did invest funds and value for services into Stellar Naomi LLC sufficient to entitle it to membership status,

2. Soria's membership interest was vested when the subscription agreement was signed by Mr. Engle on behalf of Full Moon Investments, LLC the Managing Member of Stella Naomi LLC.

3. Representatives of Stella Naomi, LLC are entitled to inspect the books and records, entitled to receive tax information provided for in Sections 11.1; 11.2; and 11.3 of the Master Operating Agreement.

4. Any objections to receiving this information on behalf of Stella Naomi LLC reference in the Master Operating Agreement in Section 11.1, evidenced at the hearing by Mr. Engle arise from personnel disagreements he has with Mr. Campbell which do not materially impact the right of Soria to inspect and receive records provided for in the Master Operating Agreement.

5. This question is a matter of contract interpretation and as such is a matter of law.

6. What is not a matter of undisputed facts or law is whether the acts taken by the parties subsequent to the admission of Soria into membership was sufficient to rescind or revoke its membership and what if any are the remedial consequences resulting to the parties were such rescission or revocation were those facts to be subsequently found by the arbitrator in a subsequent hearing. The arbitrator reserves these issues as beyond the current requests for relief sought by the parties herein.

7. In the event the Respondent wishes to have a protective order issued regarding the confidentiality of the information contained in the books and records, then the parties shall meet and confer on the language protecting the confidentiality of the records and can submit a consent order of proposed protective orders to the arbitrator for hearing.

8. Arbitrator reserves all other questions remaining including the issues mentioned above and any other questions which require to be arbitrated in the event the Court shall stay the recently filed litigation in Full Moon Investments LLC et al. vs. Tauge and Campbell et al. and refer the matter to arbitration.

9. Post-signing of the Subscription Agreement, Soria received an investor update, a K-1 form from Stellar Naomi's accountant documenting Soria's interest in the company and received distributions from Stellar Naomi.

10. The language of the Subscription Agreement specifically provides the process for becoming a member of Stellar Naomi. The Subscription Agreement is binding on the subscriber only if they are accepted as a member by the Manager signing the Agreement. The Manager reserves the right at any time prior to

acceptance to reject the subscriber, but once the Subscription Agreement is signed by both parties, the subscriber is a member of Stellar Naomi.

11. Full Moon argues that Soria's membership never vested because it never paid in full the \$150,000 subscription fee. However, as the language of the Subscription Agreement controls, and there is no mention of membership being contingent upon payment of the subscription fee, Soria became a member of Stellar Naomi when Engel signed the Agreement on behalf of Full Moon. Only after Engel signed did the obligations of a subscriber vest, including the obligation for Soria to contribute the \$150,000 subscription amount. Full Moon could have provided a right to expel a member or void the membership interest by including an express provision in the operative documents, but there is no such provision in the Operating Agreement, Series Agreement, or Subscription Agreement. See *Grove v. Brown*, 2013 WL 4041495, 38 Del. J. Corp. L. 1163 (Del. Ch. 2013).

12. Moreover, there is evidence of the membership of Soria, including: (1) evidence of capital contributions; (2) evidence of tax filings; (3) evidence of distributions; (4) investor updates given to Soria; (5) and Engel's allegations in the legal malpractice action that Campbell and individual members of the Campbell-Teague firm are investors of Stellar Naomi.

13. Nor was Soria ever removed as a member after it was accepted. Article 9 of the Master Agreement specifically provides that a person shall cease to be a member "only upon the occurrence" of one of the events delineated in the Article, none of which apply here. There is no provision in any operative document that allows a person's membership to be unilaterally voided by the Manager.

14. Stellar Naomi additionally contends that Soria never became a member of Stellar Naomi because it never paid in full the \$150,000 subscription payment, resulting in failure of consideration. An enforceable contract consists of an offer, acceptance, and consideration. *Patel v. Patel*, 2009 WL 427977, at *3 (Del. Super. Ct. Feb. 20, 2009) (citing *Salisbury v. Credit Serv., Inc.*, 199 A. 674, 681 (Del. Super. Ct. 1937)).

15. However, as discussed above, Soria's obligation to pay the \$150,000 only vested after being accepted by the Manager and becoming a Stellar Naomi member. This is supported by the plain language of the Subscription Agreement which says, "Subject to acceptance by Full Moon Investments, LLC (the "Manager") . . . the Subscriber hereby . . . agrees to pay the Investment amount, to become a member of the Series (a "Series Member"), to be bound by the Series Agreement and perform the Subscriber's obligations thereunder." (Emphasis added). The obligation of paying the Investment amount clearly only vests after acceptance by the Manager and is a separate obligation from becoming a member. And again, if the \$150,000 payment was to be part of the consideration for the Agreement, Respondent could have

included a provision providing that membership did not vest upon the acceptance of the subscriber by the Manager's signature, but instead, after the \$150,000 was paid in full. See *Grove v. Brown*, 2013 WL 4041495, 38 Del. J. Corp. L. 1163 (Del. Ch. 2013). Since it did not, the consideration in this Subscription Agreement clearly did not include the \$150,000 investment.

16. The law limits an "inquiry into consideration to its existence and not whether it is fair or adequate." Consideration existed here, and that is sufficient. *Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2020) (internal citations omitted). It is undisputed that Soria contributed at least \$30,000 in capital contributions, evidencing consideration. The failure of consideration does not challenge the formation of a contract, only subsequent performance by a party. *Baynard v. Jervy*, 1985 Del. Ch. LEXIS 474 at *8, 1985 WL 21132. By asserting failure of consideration, Stellar Naomi in effect admits the validity of the contract, and thus the existence of Soria as a member. If failure of consideration was the case, Stellar Naomi could have pursued a claim for damages alleging the total amount paid by Soria did not reach their contractual obligation of \$150,000, but they have yet to seek this relief.

17. Stellar Naomi additionally contends that Soria never became a member of Stellar Naomi because it never paid in full the \$150,000 subscription payment, resulting in failure of consideration. An enforceable contract consists of an offer, acceptance, and consideration. *Patel v. Patel*, 2009 WL 427977, at *3 (Del. Super. Ct. Feb. 20, 2009) (citing *Salisbury v. Credit Serv., Inc.*, 199 A. 674, 681 (Del. Super. Ct. 1937))

18. However, as discussed above, Soria's obligation to pay the \$150,000 only vested after being accepted by the Manager and becoming a Stellar Naomi member. This is supported by the plain language of the Subscription Agreement which says, "Subject to acceptance by Full Moon Investments, LLC (the "Manager") . . . the Subscriber hereby . . . agrees to pay the Investment amount, to become a member of the Series (a "Series Member"), to be bound by the Series Agreement and perform the Subscriber's obligations thereunder." (Emphasis added). The obligation of paying the Investment amount clearly only vests after acceptance by the Manager and is a separate obligation from becoming a member. And again, if the \$150,000 payment was to be part of the consideration for the Agreement, Respondent could have included a provision providing that membership did not vest upon the acceptance of the subscriber by the Manager's signature, but instead, after the \$150,000 was paid in full. See *Grove v. Brown*, 2013 WL 4041495, 38 Del. J. Corp. L. 1163 (Del. Ch. 2013). Since it did not, the consideration in this Subscription Agreement clearly did not include the \$150,000 investment.

19. The court limits their "inquiry into consideration to its existence and not whether it is fair or adequate." Consideration existed here, and that is sufficient. *Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2020) (internal citations omitted). The

arbitrator is in no position to determine whether it was fair. It is undisputed that Soria contributed at least \$30,000 in capital contributions, evidencing consideration. And, in any event, failure of consideration does not challenge the formation of a contract, only subsequent performance by a party. *Baynard v. Jervey*, 1985 Del. Ch. LEXIS 474 at *8, 1985 WL 21132. By asserting failure of consideration, Stellar Naomi in effect admits the validity of the contract, and thus the existence of Soria as a member. If failure of consideration was the case, Stellar Naomi could have pursued a claim for damages alleging the total amount paid by Soria did not reach their contractual obligation of \$150,000, but they brought no such claim.

20. Accordingly, the Arbitrator holds that Soria is an investor/member of Stellar Naomi and Claimant's Motion for Summary Judgment.

The Arbitrator hereby awards Soria, LLC, Claimant that it is a member of Stella Naomi, LLC and is entitled to all the membership benefits of that entity included the rights to inspect the books records and tax filings of that entity in compliance with the Master Operating Agreement. The Arbitrator directs all records of Stella Naomi will be made available for inspection within ten business days of the filing of this order. If the Respondent desires a protective order then the parties shall meet and confer over its terms and present a consent order to the arbitrator for entry in this matter and if not, the parties shall submit competing orders to the Arbitrator for resolution before the expiration of ten business days. At the request of the Respondent, the Arbitrator will hold this matter open for 90 days to determine if any matters filed in the case involving parties in privity with these parties will be set for arbitration as well. The arbitrator will be available for further relief in the event that records sought are not produced.

This 30 day of August, 2023.



Robert N. Hunter, Jr., Arbitrator

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THE THIRTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO: 2023-CP-23-01567

Full Moon Investments, LLC,)
Stellar Naomi, a series of Yield Capital, LLC,)
and John David Engel,)

Plaintiffs,)

vs.)

Campbell Teague, LLC,)
George A. Campbell, Jr., Esquire, individually,)
Elizabeth Teague, Esquire, individually,)
Emily O'Brian, Esquire, individually,)
Molly Cash, Esquire, individually, and,)
Beau Brogdon, Esquire, individually,)

Defendants.)

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
RULE 59(e) MOTION**

TO: THE DEFENDANTS ABOVE NAMED BY AND THROUGH THEIR ATTORNEYS OF
RECORD:

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THE
DEFENDANTS' RULE 59(e) MOTION¹**

The South Carolina Rules of Professional Responsibility is a statement of the public policy of the State of South Carolina as it pertains to lawyers. The Defendants are lawyers, subject to this public policy. Defendants' Rule 59(e) asks this Court to alter its current correct ruling and enforce an arbitration provision between the Defendant lawyers with their client that is in violation of the public policy of the State of South Carolina as it is in violation of Rule 1.8, SCRPC. In short, the Defendants entered a prohibited business transaction with their client, and now seek to use their unethical agreement to deprive their clients of the right to have their conduct evaluated by a jury.

¹ Plaintiffs hereby adopted and incorporate by reference as if written herein verbatim all of the arguments made in their filings concerning the arbitration issue as well as the arguments made by their counsel during the hearing on the same. This memorandum supplements those arguments and elaborates on the same.

(Please see the affidavit of Attorney William O. Higgins, Esquire filed with the legal malpractice complaint on March 31, 2023).

To be clear, the fee agreement in this case contains **NO ARBITRATION PROVISION**. Instead, the Defendants seek to bootstrap an arbitration provision contained in a transactional document prepared in conjunction with a prohibited business transaction in order to compel legal malpractice claims into arbitration. However, in violation of Rule 1.8, SCRPC, the client was not informed **“in writing”** to seek the advice of “independent legal counsel on the transaction,” and the client never gave its “informed consent” to the arbitration provision the Defendants seek to enforce. (Please see Rule 1.8, SCRPC.) As previously briefed, the Individual Defendants, who are lawyers, created Soria, a Series of Belltower, LLC (“Soria”) to invest in their client, Plaintiff Stellar Naomi, a series of Yield Capital, LLC, and did so in violation of the South Carolina Rules of Professional Conduct. Of course, this is a legal malpractice action - and Soria is **NOT** a law firm.

Defendants’ request violates the South Carolina Supreme Court’s ruling in *White v. J.M. Brown Amusement Co.*, 601 S.E.2d 342, 360 S.C. 366 (2004) which holds that, “The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.” *Berkebile v. Outen*, 311 S.C. 50, 53-54, 426 S.E.2d 760, 762 (1993) (stating [a]n illegal contract has always been unenforceable); *Batchelor v. American Health Ins. Co.*, 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy as expressed in constitutional provisions, statutes, or judicial decisions are void).” The Court was correct in its original ruling and should not now violate South Carolina’s public policy as the Defendants implore it to do.

CONCLUSION

For the reasons stated herein, as well as for the numerous reasons stated and argued previously, Defendants' Rule 59(e) motion should be denied.

Charleston, South Carolina
September 27, 2023

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Arbitration

AMERICAN ARBITRATION ASSOCIATION
Case Action No. 01-21-0016-6902

- - -

Soria, a series of Belltower, :
LLC, :
Claimant, :
vs. :
Stellar Naomi, a series of :
Yield Capital, LLC, :
Respondent. :

ARBITRATION
(Before the Honorable Robert Hunter)

DATE TAKEN: June 12, 2023
TIME BEGAN: 9:20 a.m.
TIME ENDED: 3:05 p.m.
LOCATION: Tonnsen Bach
1306 South Church Street
Greenville, South Carolina
REPORTED BY: Tami I. Watters, RPR, CRR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
(803) 212-0012

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17 Representing the Respondent

18 ALSO PRESENT:

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20 BURL F. WILLIAMS - Representing Jonathan Heigel
21
22
23
24
25

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Arbitration

1	E X H I B I T S			
2	CLAIMANT'S	DESCRIPTION	MARKED	ADMITTED
3	1	Subscription Agreement	36	35
4	2	Stellar Naomi Series		
5		Agreement for Yield Capital		
		LLC	36	35
6	3	Limited Liability Company		
7		Agreement for Yield Capital		
8		LLC, a Delaware Limited		
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12		LLC Bank Statement		
		10/1/20 - 10/31/20	36	35
13	7	Check 1203		
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15	8	Check 207, Colby James Cash		
		and Molly Hubbard Cash	36	35
16	9	Summons	36	35
17	10	Affidavit of William O.		
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19	11	Trust Ledger Report		
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Arbitration

1	E X H I B I T S			
2	RESPONDENT'S	DESCRIPTION	MARKED	ADMITTED
3	1	Limited Liability Company		
4		Agreement of Yield Capital		
5		LLC, a Delaware Limited		
6		Liability Company	105	35
7	2	Written Consent of the		
8		Manager of Yield Capital LLC	105	35
9	3	Affidavit of George Campbell	105	35
10	4	Claimant's Answers to		
11		Interrogatories	105	35
12	5	Check 207, Colby James Cash		
13		and Molly Hubbard Cash	105	35
14	6	Check 1203, Adam-Michael M.		
15		O'Brian	105	35
16	7	11/20/2021 Letter from Don		
17		Wyant, Jr., CPA	105	35
18	8	Amended K-1 for Soria, A		
19		Series of Belltower, LLC	105	35
20	9	Notice of Termination of		
21		Representation	105	35
22	10	Letter to David Engel		
23		(cc: Mike Meilinger)	105	35
24	11	Arbitration Demand	105	35
25	12	Invoices	105	35

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P R O C E E D I N G S

- - -

THE ARBITRATOR: We're on the record. And my watch has disappeared, so what time is it?

MR. CARTER: 9:18.

THE ARBITRATOR: 9:18, we're on the record. We're here in the arbitration matter of Soria, A Series of Belltower, LLC versus Stellar Naomi, A Series of Yield Capital LLC in the American Arbitration Association Case No. 01-21-0016-6902.

I'm Robert Hunter. I'm a former appellate judge in North Carolina. I have no further disclosures to make to the parties other than to say I am a FINRA arbitrator as well as a AAA arbitrator and I do have some securities experience in litigating similar matters before I became a judge, but that was over 15 years ago. So I don't know that the law's changed, but I'm sure whatever the law is, I'll be well educated by the lawyers.

If the Claimant and his counsel would introduce themselves for the record.

1 BY MR. ANTHONY:

2 Q -- to establish the hierarchy in terms of
3 how these organizations work.

4 So it's my understanding that you're the
5 managing member of Full Moon Investments, LLC,
6 right?

7 A Yes.

8 Q Okay. And Full Moon Investments is the
9 managing member of Stellar Naomi, correct?

10 A Is the manager, yeah.

11 Q Is the manager?

12 A Yeah.

13 Q And then Stellar Naomi is a series of
14 Yield Capital LLC; is that right?

15 A Say that again?

16 Q Stellar Naomi is a series of Yield
17 Capital LLC?

18 A Correct.

19 Q And so you, through Full Moon,
20 effectively make the decisions for Stellar Naomi?

21 A Correct.

22 Q So let me go through just a little bit of
23 the background story here, partly for the judge's
24 benefit.

25 The thing that I understand really

1 all those assets we were just talking about, right?

2 A Correct, through Full Moon Investments.

3 Q Okay.

4 A Because Full Moon Investments had the
5 right to buy it.

6 Q Okay.

7 A In the allegation.

8 THE ARBITRATOR: Was Ondara the name
9 of the shelf company?

10 THE WITNESS: Yes. Ondara
11 Directorship, O-N-D-A-R-A, and then
12 Directorship SL, or technically SLU.

13 BY MR. ANTHONY:

14 Q So Ondara was acquired to essentially
15 make that purchase to comply with what you'd
16 already been told was the Spanish law?

17 A Yeah.

18 Q But Ondara was going to be a hundred
19 percent owned by Stellar Naomi, correct?

20 A Well, technically not, no. Full Moon
21 Investments was the required titleholder, so that's
22 the way we closed it.

23 So Full Moon Investments was -- held
24 assets in constructive trust for investors, because
25 Full Moon Investments had the obligation to fulfill

1 the bid and maintain all the employees.

2 Q And who's the owner of Full Moon
3 Investments?

4 A That would be me.

5 Q You're the sole shareholder?

6 A Yeah. There's a small shareholder that
7 has a 2 and a half percent interest.

8 Q Okay. So Ondara was actually owned by
9 Full Moon Investments.

10 A Correct.

11 Q And so Ondara was the company that
12 actually purchased the greenhouse and all these
13 assets that we were just discussing.

14 A No. Full Moon Investments purchased the
15 greenhouse.

16 Q Okay.

17 A And the assets were taken into Ondara.
18 Full Moon Investments is hundred percent
19 shareholder.

20 THE ARBITRATOR: So it's a wholly
21 owned subsidiary of Full Moon.

22 THE WITNESS: Correct.

23 BY MR. ANTHONY:

24 Q I apologize. And the business plan was
25 to operate the rose nursery initially but

1 A Sure.

2 Q Okay. And they billed you for those
3 services and you or your entities paid for those
4 services, right?

5 A Yes.

6 Q All right. And Campbell Teague did work
7 on the Stellar Naomi deal, right?

8 A I looked at that. I'm prepared --

9 THE ARBITRATOR: Answer the question
10 and then provide your explanation.

11 THE WITNESS: They did cursory
12 review after I prepared everything, yeah.

13 BY MR. ANTHONY:

14 Q Okay. So yes, they did -- the firm did
15 do some work?

16 A Very minimal. Maybe four hours' work
17 reviewing the docs.

18 Q And that time for the legal services,
19 that was actually marked off of invoices, wasn't
20 it?

21 A I don't know what you're talking about.

22 Q There was one invoice you received --

23 THE ARBITRATOR: You don't know.

24 THE WITNESS: I don't know. I don't
25 recall.

1 BY MR. ANTHONY:

2 Q Okay. All right. Look briefly at the
3 Subscription Agreement again.

4 THE ARBITRATOR: This is Exhibit 2?

5 MR. ANTHONY: This is Exhibit 1,
6 your Honor.

7 BY MR. ANTHONY:

8 Q All right. Item 1 here on the front says
9 that this is -- the Subscription Agreement is
10 subject to acceptance by Full Moon Investments,
11 right? This Subscription Agreement had to be
12 accepted by Full Moon?

13 A That's right. That's one of the
14 conditions.

15 Q And the acceptance is indicated by
16 signing at the foot of the document, right?

17 A Sure.

18 Q Okay. And no question that you signed at
19 the foot of the document to say that you were
20 accepting that Subscription Agreement, correct?

21 A No, no question.

22 Q Okay. It says that you can reject that
23 Subscription Agreement at any point for whatever
24 reason within your sole discretion up until the
25 point that you signed accepted, correct?

1 BY MR. FURMAN:

2 Q All right. So could -- let's turn to
3 Mr. Campbell and your relationship with him.

4 How did you come to know him?

5 A I was referred to him by a business
6 broker, said I ought to talk to him, good rates,
7 and reached out to him to work with me on a
8 transaction that I was closing around late '17,
9 early '18.

10 Q Okay. And was that part of the Spain --

11 A No.

12 Q -- Operation Agreement we've talked about
13 today?

14 Without describing any legal advice,
15 could you describe, generally, the type of legal
16 work that Mr. Campbell's firm performed for your
17 operation?

18 A You know, reviewing documents I already
19 had for Subscription Agreements, modifying them,
20 you know, that kind of thing, maybe adding a
21 document or two based on the deal structure.

22 Q Okay. And for Stellar Naomi
23 specifically, I think you testified that it was
24 very minimal work?

25 A Yes. Yeah. So, you know, the private

1 placements -- the Subscription Agreement you see
2 there and all these other documents, they're pretty
3 much the same documents over and over except for
4 the supplement to the PPM which is a description of
5 the actual current opportunity, and the Series
6 Agreements which define how investors get paid.
7 Those are the two distinctions of every deal.

8 And a lot of transactions are very
9 similar, so it's really just fitting it to the
10 deal, describing the opportunity in the supplement
11 that goes with the Master Operating Agreement and
12 Master PPM, and, you know, it's cut and paste.

13 Q Okay. But for Stellar Naomi
14 specifically, you've looked at this -- what did
15 Mr. Campbell's firm perform?

16 A Yeah. I looked at it and all I see is
17 a -- you know, a Spanish gentleman and I prepared
18 the private placement, all the numbers, the private
19 equity guy that I mentioned, and it looks like,
20 based on my records, that Beau at George's firm
21 reviewed the documents for typos, inconsistencies,
22 that kind of thing; a few hours' work it looked
23 like to me. I actually looked at that yesterday --
24 the day before yesterday.

25 Q All right. Can you tell me how it came

1 BY MR. FURMAN:

2 Q We're still in this initial discussion
3 about the investment. What was discussed about the
4 timing of when the 150 would be paid?

5 A We needed the money quickly because it
6 was a bankruptcy court bid and I had put a bid bond
7 up, personal bid bond --

8 Q Yeah.

9 A -- to guarantee I'd close. So we weren't
10 sure when the trustee would make us close, and so
11 we needed to get the money in ASAP, July, early
12 July, mid-July 2020, to make sure we had the cash
13 sitting there so I wouldn't forfeit my bid bond.

14 Q So as a result of this discussion with
15 Mr. Campbell, what were your next steps to
16 effectuate his investment?

17 A He indicated it was 150 he gave to me and
18 my daughter likely. The name of the company that
19 he had formed to invest in the entity, I didn't
20 know who was part of that entity at the time, but
21 he had formed a company, and we teed up documents
22 with all the tax IDs and names of the entity and
23 addresses and this kind of thing, filled out the
24 forms of the Subscription Agreement, the Master
25 Operating Agreement, and then the Series Agreement.

1 And those were teed up in DocuSign, I'm
2 quite sure, and then those were put out for
3 signature; for George's signature first, as he
4 indicated that he was the manager of the entity
5 that he had formed and maybe -- you know -- yeah,
6 entity he had formed, and then to me for
7 acceptance.

8 Q Okay. So you --

9 A Now, those documents were teed up, I'm
10 sure, along with wire transfer instructions.

11 Q Okay. So let's look at the Subscription
12 Agreement.

13 A Okay.

14 Q Let's use Respondent -- or I'm sorry.
15 This one says Respondent -- Claimant's exhibits.
16 Let's use Claimant's Exhibit 1, just to look at it.

17 A Is this Claimant's exhibit at the top?
18 It says Respondent.

19 Q It does, but it says Claimant's Exhibits
20 at the top. I think Mr. Anthony named them for who
21 was getting the binder.

22 So I understand this is the subscription
23 that you caused to be sent to Mr. Campbell.

24 A Looks like it.

25 Q And Mr. Campbell signed it on behalf of