

Office of the Minnesota Secretary of State

Business Trust | Original Filing

Minnesota Statutes, Chapter 318



NOTE: Business Trusts are now filed as Official Documents of the State. There is no fee for filing these documents. Please review Minnesota Statute Chapter 318 prior to filing any documents. See Page 2 for Minnesota Statutes 318.01-318.06, or, <https://www.revisor.mn.gov/statutes/?id=318>

1. **Name of Trust:** (Required) SE 13200 PIONEER (EDEN PRAIRIE), DST
2. **Home Jurisdiction:** (Required) DELAWARE
3. **Complete Registered Office Address & Agent in Minnesota** (Required):
 - a. Agent Name: CORPORATION SERVICE COMPANY
 - b. Address: 2345 RICE STREET, SUITE 230
 - c. City, State, Zip: ROSEVILLE, MN 55113
4. **Trustees** (Minimum 2 Required for Minnesota Trusts):
 - a. Trustee: SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC
 - b. Trustee: DELAWARE TRUST COMPANY
 - i. Attach additional sheets if necessary.
5. **Declaration of Trust Information** (Required) –
 - a. Attach a Copy of the Trust
 - b. Attach a Declaration by a Trust Official that the copy submitted is a true copy
6. **Documentation for Non-Minnesota Trusts.**
 - a. In addition to the above, attach a Certificate of Existence or Status from the Home State authenticating the prior filing of the trustees.
7. **This Trust is:** Perpetual Not Perpetual and expires _____
8. **This Trust has been approved by the Commissioner of Commerce to transact the business of insurance**
 No Yes, and a copy of the Approval of the Commissioner of Commerce is attached.

I certify that the documents filed constitute a true and correct copy of the "declaration of trust" in accordance with Minnesota Statutes 318.02.

Signature  Date June 2, 2022

List a name, e-mail address, and daytime telephone number of a person who can be contacted about this form:

Name	e-mail address	Telephone Number
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All of the information on this form is public. Minnesota law requires certain information to be provided for this type of filing. If that information is not included, your document may be returned unfiled. This document can be made available in alternative formats, such as large print, Braille or audio tape, by calling 651-296-2803/voice. For a TTY/TTD (deaf and hard of hearing) communication, contact the Minnesota Relay Service at 1-800-3529 and ask them to place a call to 651-296-2803. The Secretary of State's Office does not discriminate on the basis of race, creed, color, sex, sexual orientation, national origin, age, marital status, disability, religion, reliance on public assistance or political opinions or affiliations in employment or the provision of service.

Document Number: 223525
Filed on June 10, 2022
Office of the Minnesota
Secretary of State, Steve Simon

CERTIFICATE
of
SE 13200 PIONEER (EDEN PRAIRIE), DST

On this June 2, 2022, the undersigned makes the following certification with respect to SE 13200 PIONEER (EDEN PRAIRIE), DST, a Delaware statutory trust (the "Trust"):

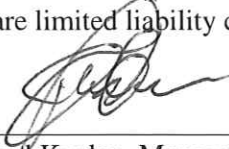
Attached hereto as EXHIBIT A is a true and accurate copy of the Trust's Trust Agreement, including all amendments thereto through the date hereof, which has not been repealed, amended or modified in any material respect.

[Signature appears on next page]

Document Number: 223525
Filed on June 10, 2022
Office of the Minnesota
Secretary of State, Steve Simon

This instrument has been executed by the undersigned on or as of the date set forth above.

SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC,
a Delaware limited liability company

By: 
Richard Kaplan, Manager

Being the Discretionary Trust Administrator of the Trust.

Signature Page to Certificate of SE 13200 Pioneer (Eden Prairie), DST

Document Number: 223525
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Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SE 13200 PIONEER (EDEN PRAIRIE), DST" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWELFTH DAY OF JANUARY, A.D. 2022.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "SE 13200 PIONEER (EDEN PRAIRIE), DST" WAS FORMED ON THE THIRD DAY OF DECEMBER, A.D. 2021.

Document Number: 223525
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Secretary of State, Steve Simon



6441726 8300

SR# 20220106487

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 202382197

Date: 01-12-22

1 1

EXHIBIT A
TRUST AGREEMENT

[SEE ATTACHED]

Document Number: 223525
Filed on June 10, 2022
Office of the Minnesota
Secretary of State, Steve Simon

TRUST AGREEMENT
of
SE 13200 PIONEER (EDEN PRAIRIE), DST
a statutory trust formed under the laws of the State of Delaware

THIS TRUST AGREEMENT (this "Agreement") of SE 13200 PIONEER (EDEN PRAIRIE), DST, a Delaware statutory trust (the "Trust"), is made and entered into as of January 14, 2022, among SE 13200 PIONEER (EDEN PRAIRIE) SPONSOR, LLC, a Delaware limited liability company ("Settlor"), DELAWARE TRUST COMPANY, a Delaware trust company ("Trustee"), and SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC, a Delaware limited liability company ("Discretionary Trust Administrator") (Trustee and Discretionary Trust Administrator are referred to herein collectively as "Management"). This Agreement supersedes any interim or prior trust agreement of the Trust.

RECITALS

A. The "Property" consists of the land and building commonly known as 13200 Pioneer Trail, Eden Prairie, Minnesota. The Property is owned by SE 13200 PIONEER (EDEN PRAIRIE) TRANSITORY, LLC, a Delaware limited liability company ("Transitory"). Immediately prior to the effective time of this Agreement, Settlor acquired all of the membership interests in Transitory.

B. A portion of the acquisition price for the Property was financed with the proceeds of financing provided by BRIDGEWATER BANK ("Lender") pursuant to a Loan Agreement anticipated to be dated on or about the date of this Agreement. As used in this Agreement, (i) the term "Loan" shall mean and refer to the foregoing financing and to any renewal, replacement, or refinancing thereof and, if such financing has been repaid, to any successor financing that is secured by the Property, (ii) the term "Lender" shall mean and refer, collectively, to each person that is the owner or holder of any portion of the Loan and to any person acting as agent for such persons, including Lender, and to their respective successors and assigns, and (iii) the term "Loan Documents" shall mean and refer to all loan agreements (each a "Loan Agreement"), promissory notes, mortgages or deeds of trust on the Property and various other documents, agreements and instruments that any time evidence the obligations of the parties related to the Loan.

C. The Property includes, without limitation, all of the tenants' rights and obligations in that certain lease to WINNEBAGO INDUSTRIES, INC., an Iowa corporation ("Tenant"), pursuant to a Lease Agreement between Transitory, as landlord, and Tenant, as tenant (the "Lease").

D. Settlor intends to convey the Property to the Trust, which will hold the same subject to the terms of this Agreement, the Loan and the Lease. Settlor intends to effect the transfer and conveyance of the Property to the Trust by causing Transitory to merge with and into the Trust.

E. Beneficial Interests (as defined below) will be issued to the Settlor and one or more other Beneficial Owners (as defined below) pursuant to that Confidential Private Placement Memorandum of SE 13200 PIONEER (EDEN PRAIRIE), DST dated December 8, 2021 (the "Memorandum") or otherwise.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

Article 1
Declaration and Settlement of Trust

1.1 Declaration of Trust. Settlor and Management do hereby declare this trust (the “Trust”) under and pursuant to the Delaware Statutory Trust Act (Title 12, Chapter 38 of the Delaware Code) (the “Act”). It is the intention of the parties hereto that the Trust constitute a statutory trust under the Act and that this Agreement constitute the governing instrument of the Trust.

1.2 Trust Agreement. This Agreement is and shall remain the sole and exclusive governing instrument of the Trust. Except as otherwise expressly provided in this Agreement, the rights and obligations of the Settlor, Management and Beneficial Owners shall be governed by the Act.

1.3 Settlement into Trust. Settlor hereby transfers and conveys the Property to the Trust, to be held by the Trust pursuant to the terms and conditions of this Agreement, subject to the Loan and the Lease. The Settlor will effect the transfer and conveyance of the Property to the Trust by causing Transitory to merge with and into the Trust. Legal title to the Property shall be vested in the Trust as a separate legal entity under the Act.

1.4 Acceptance of Settlement. Management hereby accepts Settlor’s settlement of the Property into the Trust and agrees to hold the same subject to the terms of this Agreement, the Loan and the Lease. It is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the part of Management personally to perform any of Trust’s obligations under the Loan as defined in the Loan Documents or the landlord’s obligations under the Lease, all such liability being that of the Trust and limited to the assets of the Trust.

1.5 No Further Settlements into Trust. Except for Settlor’s settlement of the Property as provided in this Article, neither Settlor, Beneficial Owners nor any other person shall contribute, nor shall Management accept, any additional money or property as a settlement into this Trust.

Article 2
Administrative and Ministerial Matters

2.1 Filings. Trustee is hereby authorized and directed to file a Certificate of Trust conforming to the requirements of the Act in the Office of the Delaware Secretary of State, and Management shall hereafter make or cause to be made such other filings and recordings and they shall do or cause to be done such other acts and things conforming thereto as shall constitute compliance with all requirements for the formation of a trust under the Act and the qualification of the Trust to subsist under the laws of the state in which the Property is located. The Discretionary Trust Administrator shall not be required to execute or file any documents with the Office of the Delaware Secretary of State.

2.2 Name. The name of the Trust shall be the name set forth in the heading of this Agreement. The affairs of the Trust shall be conducted under the Trust name.

2.3 Records to be Maintained. Discretionary Trust Administrator shall at all times during the continuance of the Trust keep at the Trust’s principal office such records and information as the Trust may be required to maintain in accordance with the Act and the laws of the state in which the Property is located.

2.4 Registered Office and Registered Agent. In any state where the same may be required, Discretionary Trust Administrator shall designate a registered office and a registered agent for service of

process. Discretionary Trust Administrator may from time to time in accordance with the Act change the Trust's registered office and/or registered agent.

2.5 Principal Office. The principal office of the Trust shall be located at such place within or outside Delaware as Discretionary Trust Administrator may from time to time designate by notice to the Beneficial Owners.

Article 3 Trust Purpose

The sole purpose of the Trust is to engage in the following activities:

- (a) To acquire, own, hold, lease, operate, manage and maintain the Property (or an undivided interest therein) and to contract for the operation, maintenance and management of the Property.
- (b) To enter into and perform its obligations under the Loan Documents.
- (c) To sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property to the extent permitted under the Loan Documents, including without limitation to accept the settlement of the Property into the Trust on behalf of Settlor (subject to the Trust's assumption of the Loan), by merger of Transitory into and with the Trust, in exchange for beneficial interests (the "Interests") in the Trust to be issued to Settlor upon such merger.
- (d) To engage in any lawful act or activity and to exercise any powers permitted to an entity such as the Trust that is organized under the laws of its jurisdiction of formation that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

Management shall have the power to do all acts and things necessary or useful in connection with the foregoing, including without limitation to perform the Trust's obligations under the Loan Documents and the lessor's obligations under the Lease. The purposes of the Trust and the powers of Management shall nonetheless be limited by the provisions of Article 7 through Article 10 and Article 14, below.

Article 4 Issuance of Beneficial Interests

4.1 Issuance of Beneficial Interests. Settlor and Management have declared and settled this Trust in contemplation of the issuance of Beneficial Interests in the Trust ("Beneficial Interests") to the Settlor.

4.2 Beneficial Owners. Settlor and its successors and assigns and any other person owning interests in the Trust shall be referred to as a "Beneficial Owner" of the Trust. The successive successors and assigns of any person described in the preceding sentence shall also be Beneficial Owners of the Trust.

4.3 Execution and Joinder. Each Beneficial Owner shall execute and deliver a counterpart joinder signature page to this Trust Agreement pursuant to which such Beneficial Owner agrees to be bound by the terms and provisions of this Agreement and accepts its Beneficial Interest in the Trust. Upon receipt of such executed counterpart joinder signature page, the Discretionary Trust Administrator and Trustee shall recognize such Beneficial Owner as a beneficial owner of the Trust for all purposes of this Agreement.

4.4 Percentage Beneficial Interests. There shall be only one class of Beneficial Interests in the Trust representing undivided "Percentage Beneficial Interests" in the assets of the Trust. The Percentage Beneficial Interest of each Beneficial Owner acquiring an interest in the Trust pursuant to the Memorandum shall be that percentage set forth in the purchase/subscription documents executed by the Beneficial Owner pursuant to the Memorandum. The Discretionary Trust Administrator shall maintain a record of the Beneficial Interests of all Beneficial Owners. The Percentage Beneficial Interest of a Beneficial Owner who has not acquired an interest in the Trust pursuant to the Memorandum (but by assignment or by operation of law) shall be the Percentage Beneficial Interest of such Beneficial Owner's predecessor.

4.5 Transfers of Beneficial Interests. Except as the same shall be restricted or conditioned by the terms of the Loan Documents, this Agreement, the Act or the securities laws of the United States or any state, Beneficial Owners shall be free to assign or otherwise transfer their Beneficial Interests in the Trust to any person; provided, that, for any such assignment or other transfer of all or any portion of a Beneficial Owner's Beneficial Interest in the Trust to be effective and valid, each of the following conditions must be satisfied prior to the effective date of such assignment or other transfer: (i) such Beneficial Owner shall have provided the Discretionary Trust Administrator with written notice of such Beneficial Owner's intent to assign or otherwise transfer such Beneficial Interest, and (ii) the Discretionary Trust Administrator shall have provided such Beneficial Owner with written notice that such assignment or other transfer is permissible pursuant to the Loan Documents (as determined by the Discretionary Trust Administrator). If the conditions referenced in the preceding sentence have not been satisfied or waived in writing by the Discretionary Trust Administrator with respect to any assignment or other transfer by a Beneficial Owner of all or any portion of its Beneficial Interest in the Trust, then such assignment or other transfer shall be void from inception and of no force or effect whatsoever. Beneficial Interests may also be transferred by operation of law, subject to the aforesaid restrictions and conditions. Any assignee or successor to a Beneficial Owner shall be a Beneficial Owner, shall be required to execute a joinder to this Agreement (in the form of EXHIBIT 1 attached hereto) and shall be bound in all respects by the terms of this Agreement (irrespective of whether such assignee or successor executes such a joinder). Any fees, costs or other expenses incurred in relation to an assignment or other transfer of a Beneficial Interest (including those that may be imposed by the Lender) shall be the joint and several obligation of the assignor and the assignee.

4.6 Effect of Transfers and Other Events. Neither the death, disability, court declaration of incompetence, bankruptcy, dissolution, liquidation or other termination of a Beneficial Owner or Management nor the transfer of a Beneficial Interest by assignment or operation of law shall dissolve the Trust, but it shall be continued with the assignee, successor or legal representative of the Beneficial Owner or the successor of Management as additional parties hereto; such assignee, successor or legal representative of a Beneficial Owner shall, to the extent of the interest acquired, be entitled only to an aliquot part of the predecessor Beneficial Owner's Beneficial Interest.

4.7 Uncertificated or Certificated Securities. Unless the Discretionary Trust Administrator decides otherwise, the interests of the Beneficial Owners in the Trust shall not be certificated.

(a) Issuance of Certificates. In the sole discretion of the Discretionary Trust Administrator, the Trust may issue a trust certificate (the "DST Certificate") in the name of any Beneficial Owner certifying that the Beneficial Owner named therein is the record holder of the Beneficial Interests set forth therein. For purposes of this Agreement, the term "record holder" shall mean the person whose name appears on the books and records of the Trust as the Beneficial Owner owning the Beneficial Interests at issue.

(b) *Register of Certificates.* The Trust shall maintain books for the purpose of registering the transfer of Beneficial Interests in the Trust. A Beneficial Interest in the Trust which is transferred in accordance with the terms of this Agreement shall be transferable on the books of the Trust by the record holder thereof in person or by such record holder's duly authorized attorney, but, except as provided in paragraph (c) with respect to lost, stolen or destroyed certificates, no transfer of a Beneficial Interest in the Trust shall be entered until the previously issued DST Certificate representing such interest shall have been endorsed and surrendered to the Trust and canceled and a replacement DST Certificate issued to the assignee of such interest in accordance with such procedures as the Trust may establish. Subject to Section 4.5, in the event of a transfer of less than all of a Beneficial Owner's Beneficial Interests in the Trust, the Trust shall issue to the transferring Beneficial Owner a new DST Certificate representing the Beneficial Interests in the Trust not being transferred. Except as otherwise required by law, the Trust shall be entitled to treat the record holder of a DST Certificate on its books as the owner thereof for all purposes regardless of any notice or knowledge to the contrary.

(c) *Replacement of Certificates.* Subject to Section 4.5, the Trust shall issue a new DST Certificate in place of any DST Certificate previously issued if the record holder of the DST Certificate:

- (i) Makes proof by affidavit, in form and substance satisfactory to the Trust, that a previously issued DST Certificate has been lost, destroyed or stolen.
- (ii) Requests the issuance of a new DST Certificate before the Trust has notice that the DST Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim.
- (iii) Indemnifies the Trust against any claim that may be made on account of the alleged loss, destruction or theft of the DST Certificate.
- (iv) Satisfies any other reasonable requirements imposed by the Trust.

If a Beneficial Owner fails to notify the Trust within a reasonable time after it has notice of the loss, destruction or theft of a DST Certificate, and a transfer of the Beneficial Interests in the Trust represented by the DST Certificate is registered before receiving such notification, the Trust shall have no liability with respect to any claim against the Trust for such transfer or for a new DST Certificate.

(d) *Legends on Certificate.* In the discretion of the Discretionary Trust Administrator, each DST Certificate shall contain the following legend:

THE SECURITIES REPRESENTED BY THIS DST CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER STATE OR FOREIGN SECURITIES LAWS, AND MAY NOT BE OFFERED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN THE TRUST AGREEMENT OF THE TRUST, A COPY OF WHICH WILL BE FURNISHED BY THE TRUST UPON REQUEST.

4.8 Status of Beneficial Interests Under UCC. Every Beneficial Interest in the Trust shall constitute a "security" within the meaning of, and shall be governed by, Article 8 of the Uniform

Commercial Code as in effect from time to time in the State (the “UCC”). Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the UCC, such provision of Article 8 of the UCC shall control. Nothing in this Section shall be construed to relieve any assignor or assignee (collateral or otherwise) of a Beneficial Interest from the requirement to comply with, and the limitations contained in, Section 4.5.

Article 5
Administration of Cash and Distributions

5.1 Cash Administration. Discretionary Trust Administrator shall administer the cash of the Trust by collecting the Trust’s income and paying its debts and expenses, including amounts due to Management for its services hereunder and to the Asset Manager for its advisory services under the Asset Management Agreement (as defined in Section 7.6). Pending distributions to Beneficial Owners in accordance with this Article, Discretionary Trust Administrator shall invest the Trust’s cash and reserves solely in short-term obligations of (or those guaranteed by) the United States, any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a minimum stated surplus and capital of \$50 million. Discretionary Trust Administrator shall hold such obligations and certificates until they mature. Such obligations and certificates must mature no later than the next Quarterly Distribution Date (as defined below).

5.2 Distributions to Beneficial Owners. Discretionary Trust Administrator shall distribute all Available Cash (as defined herein) to the Beneficial Owners on or before the next Quarterly Distribution Date in accordance with their Percentage Beneficial Interests. “Available Cash” shall consist of all cash on hand of the Trust after the payment of all current debts and expenses, less such reserves as may be required under the Loan Documents or as may be required for necessary expenses related to the holding of the Property as Discretionary Trust Administrator may reasonably establish. The Trust’s first “Quarterly Distribution Date” shall be the 90th day after the date of this Agreement; each successive Quarterly Distribution Date shall be a date set by the Discretionary Trust Administrator that is not later than 90 days after the last Quarterly Distribution Date.

Article 6
Rights and Obligations of Beneficial Owners

6.1 Rights and Obligations of Beneficial Owners. Beneficial Owners shall take no part in the control or management of the affairs of the Trust, nor shall a Beneficial Owner have any authority to act for or on behalf of the Trust or to sign for or bind the Trust. The Property shall be owned by the Trust and no Beneficial Owner shall have or claim any legal title in the Property or any other Trust asset.

6.2 Liability. The Beneficial Owners shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

6.3 Not a Partnership, Etc. Each Beneficial Owner expressly disclaims any intention to create a partnership, corporation, association or other business entity. Nothing in this Agreement shall make any Beneficial Owner a partner or agent of another Beneficial Owner or of Management. Beneficial Owners shall not execute any instrument identifying any or all of the Beneficial Owners or Management as partners, shareholders, associates or members of a business entity or otherwise hold themselves out as partners, shareholders, associates or members of a business entity.

6.4 Waivers. For as long as any part of the Loan remains unpaid, each Beneficial Owner waives to the fullest extent permitted by applicable law any right or power that it might have to cause the

Trust or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Trust, to compel any sale of all or any portion of the assets of the Trust pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Trust.

Article 7

Management Provisions—General Terms

7.1 Management's Time Commitment. Management shall cause so much time to be devoted to the affairs of the Trust as, in their judgment, the conduct of the Trust's affairs shall reasonably require.

7.2 Liability of Management. Management (which for purposes of this Section shall include its officers, directors, shareholders, members, partners, managers, trustees, employees, agents and affiliates) shall not be liable to a Beneficial Owner or the Trust for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Trust, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent, provided that such employee, broker or agent was selected, engaged or retained and supervised with reasonable care. Management may consult with counsel and accountants in respect of Trust affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants, provided that they shall have been selected with reasonable care. Management may rely, and shall be protected in acting or in refraining from acting in reliance, upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and shall not be bound to make any investigation into any of the matters contained in any of the foregoing. Beneficial Owners shall look solely to the assets of the Trust for the return of their investment and, if the assets of the Trust remaining after payment or discharge of the debts and liabilities of the Trust are insufficient, they shall have no recourse against Management for such purpose.

7.3 Indemnification. Management shall at all times be acting hereunder not in their individual capacities but as trustee or discretionary trust administrator, as the case may be, and all persons having any claim against Management by reason of the Trust or its assets shall look solely to the assets of the Trust for payment or satisfaction thereof and not to Management personally. The Trust shall indemnify Management (which for purposes of this Section shall include its officers, directors, shareholders, partners, managers, trustees, employees, agents and affiliates) against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Trust or, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the Trust or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that the person's conduct was unlawful. The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled. The obligations of the Trust under this Section are fully subordinated to the Company's obligations to the Lender.

7.4 Third Parties and Bond. Persons dealing with Management shall be fully protected in relying upon Management's certificate that it has authority to take any action under this Trust, and any persons dealing with Management shall be fully protected in relying upon Management's certificate. No person dealing with Management shall be obligated to inquire as to the powers of Management or to see

to the application of any money or property delivered to Management. Management shall not be required to obtain authority from or approval of any court in the exercise of any power conferred upon it hereunder. Management shall not be required to make any current reports or accountings to any court nor to furnish a bond for the proper performance of the duties of Management, but if any such bond is nevertheless required by any law, statute or rule of court, no surety shall be required thereon.

7.5 Limited Representations. Management represents to the Beneficial Owners that this Agreement has been duly authorized, executed and delivered by Management. Management makes no representation or warranty as to the title, value, condition or operation of the Property or the validity or enforceability of the Lease.

7.6 Related Business Partners. Management may contract for services with and otherwise deal with any Beneficial Owner or Management or any affiliate of any Beneficial Owner or Management on any basis that is customary and competitive, or otherwise fair and reasonable. Without limitation of the foregoing, the Trust agrees, as a condition of Settlor's settlement of the Property into Trust, to enter into an asset management agreement (the "Asset Management Agreement") with SE 13200 PIONEER (EDEN PRAIRIE) AM, LLC (the "Asset Manager") and is authorized to pay the fees provided therein. Nothing in the Asset Management Agreement shall be construed to make the Asset Manager a partner or agent of the Trust, Management or Beneficial Owners.

Article 8 General Undertaking and Apportionment of Duties

Subject to the terms of this Agreement, the Act, the Loan and the Lease, Management shall take such actions as in their sole judgment are necessary or advisable to achieve the purposes of the Trust. Management shall only have the duties and obligations expressly provided in this Agreement. Except for duties and obligations specifically assigned to Trustee in this Agreement, all duties and obligations set forth herein or required under the Act shall be the duties and obligations of Discretionary Trust Administrator—all as further provided in Article 9 and Article 10.

Management may from time to time appoint one or more persons to act as additional trustees or authorized signatories to execute agreements, contracts, documents (including promissory notes, mortgages, security agreements and other loan documents) and other instruments (including deeds) on behalf of the Trust. Management may also from time to time appoint one or more persons to serve as officers of the Trust, in such capacities and with such delegated rights and powers as Management may approve. No such trustee, authorized signatory or officer shall have any different or greater rights and powers than Management has under this Agreement. Trustees, authorized signatories and officers appointed by Management shall be entitled to be indemnified by the Trust in accordance with Section 7.3.

Article 9 Authority of Trustee

9.1 Trustee Authority. The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the purpose of satisfying the requirement of Section 3807(a) of the Act that the Trust have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto that the Trustee shall have none of the duties or liabilities of the Discretionary Trust Administrator and no such duties shall be implied. The duties of the Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware; (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Trustee is required to execute under Section 3811 of the Act; and (iii) any other duties specifically allocated to the Trustee in the Agreement. To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities

relating thereto to the Trust or the Beneficial Owners, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Trustee expressly set forth in this Agreement.

9.2 Limitation of Trustee Liability. The Trustee shall not be liable for the acts or omissions of the Discretionary Trust Administrator, nor shall the Trustee be liable for supervising or monitoring the performance and the duties and obligations of the Discretionary Trust Administrator or the Trust under this Agreement. The Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence. In particular, but not by way of limitation:

(a) The Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes gross negligence on its part.

(b) No provision of this Agreement shall require the Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder, if the Trustee shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it.

(c) Under no circumstances shall the Trustee be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Trust.

(d) The Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Agreement or for the due execution hereof by the Discretionary Trust Administrator.

(e) The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate, signed by the Discretionary Trust Administrator, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(f) In the exercise or administration of the Trust hereunder, the Trustee (i) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Trustee in good faith and with due care and (ii) may consult with counsel, accountants and other skilled persons to be selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

(g) Except as expressly provided in this Section, in accepting and performing the trust hereby created the Trustee acts solely as Trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Agreement or the Trust Agreement shall look only to the Trust's property for payment or satisfaction thereof.

9.3 No Punitive, Consequential or Special Damages. The Trustee shall not be liable for punitive, exemplary, consequential, special or other damages for a breach of this Agreement under any circumstances.

9.4 Compensation of Trustee. The Trustee (or any successor Trustee) shall be entitled to receive compensation from the Discretionary Trust Administrator or from the Trust for its services in accordance with such agreement as shall have been separately agreed to from time to time by the Trustee and the Discretionary Trust Administrator or the Trust. The Trustee may consult with counsel (who may be counsel for the Discretionary Trust Administrator or for the Trustee). The reasonable legal fees incurred in connection with such consultation shall be reimbursed to the Trustee pursuant to this Section, provided that no such fees shall be payable to the extent that they are incurred as a result of the Trustee's gross negligence, bad faith or willful misconduct.

9.5 Resignation of Trustee. The Trustee shall serve for the duration of the Trust and until the earlier of (a) the effective date of the Trustee's resignation, or (b) the effective date of the removal of the Trustee. The Trustee may resign at any time by giving 30 days written notice to the Discretionary Trust Administrator. provided, however, said resignation shall not be effective until such time as a successor Trustee has accepted such appointment. The Trustee may be removed at any time by the Discretionary Trust Administrator by providing 30 days written notice to the Trustee. provided, however, such removal shall not be effective until such time as a successor Trustee has accepted such appointment. Upon the resignation or removal of the Trustee, the Discretionary Trust Administrator shall appoint a successor Trustee. If no successor Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. Any successor Trustee appointed pursuant to this Section shall be eligible to act in such capacity in accordance with this Agreement and, following compliance with this Section, shall become fully vested with the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as Trustee. Any such successor Trustee shall notify the Trustee of its appointment by providing a written instrument to the Trustee and such successor Trustee shall file an amendment to the certificate of trust as required by the Act. At such time the Trustee shall be discharged of its duties herein.

9.6 Indemnification of Trustee. The Trustee or any officer, affiliate, director, employee, or agent of the Trustee (each a "Trustee Indemnified Person") shall be entitled to indemnification from the Trust, to the fullest extent permitted by law, from and against any and all losses, claims, taxes, damages, reasonable expenses, and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever (collectively, "Indemnified Expenses"), to the extent that such Indemnified Expenses arise out of or are imposed upon or asserted against such Trustee Indemnified Persons with respect to the creation, operation or termination of the Trust, the execution, delivery or performance of this Agreement or the transactions contemplated hereby. provided, however, that the Trust shall not be required to indemnify any Trustee Indemnified Person for any Indemnified Expenses which are a result of the willful misconduct, bad faith or gross negligence of such Trustee Indemnified Person. The obligations of the Trust to indemnify the Trustee Indemnified Persons as provided herein shall survive the termination of this Agreement.

9.7 No Bond or Security Requirement The Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder.

9.8 Conditional Duty to Act. Trustee is authorized and directed to do such acts or things as Discretionary Trust Administrator shall specifically direct in written instructions delivered to Trustee. provided, however, that Trustee shall not be required to take any action if Trustee shall determine, or shall be advised by counsel, that such action is likely to result in personal liability or is contrary to applicable

law or any agreement to which Trustee is a party. Trustee shall not have any duty (a) except as provided in this Article, to file, record or deposit any document or to maintain any such filing, recording or deposit or to re-file, rerecord or redeposit any such document; (b) to obtain or maintain any insurance on the Property; (c) to maintain the Property; (d) to pay or discharge any tax levied against any part of the Property; (e) to confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the terms of the Loan or the Lease to provide such reports or financial statements; or (f) to inspect the Property at any time or to ascertain or inquire as to the performance or observance of any of the covenants of any other person under the Loan or the Lease.

9.9 Limitation on Trustee's Authority. Notwithstanding any other provision in this Agreement, Trustee shall not take any action described in Section 10.3.

Article 10
Authority of Discretionary Trust Administrator

*The provisions of this Article are in all respects subject to
the limitations and other provisions of Article 14.*

10.1 Actions of Discretionary Trust Administrator. Subject to the limitations of Section 10.3, Discretionary Trust Administrator is hereby authorized to take such actions and to do such further acts and things in order to conserve and protect the Property and any other assets of the Trust and otherwise to give effect to the intents and purposes of this Agreement. In furtherance of the foregoing the Discretionary Trust Administrator shall have the power and authority:

- (a) To accept the Property from the Settlor, as a result of the merger of Transitory into Trust.
- (b) Hold the Property subject to the terms of the Loan Documents, the Lease and the Asset Management Agreement.
- (c) Collect and distribute the income of the Trust in accordance with Article 5.
- (d) Sell or otherwise convey the Property, so long as the Discretionary Trust Administrator does not reinvest the proceeds from the sale or other conveyance.
- (e) Make capital expenditures with respect to the Property, but only (i) capital expenditures for normal repair and maintenance. (ii) capital expenditures for minor nonstructural capital improvements. and (iii) capital expenditures required by law.
- (f) Acknowledge receipt of notices of assignment of a Beneficial Owner's right to acquire Beneficial Interests as part of a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code").
- (g) Accept the Property subject to the Loan and mortgage and Lease.

10.2 Discretionary Trust Administrator Authority. Discretionary Trust Administrator is hereby authorized and directed to enter into any agreement permitted or directed by this Agreement and the Act without the consent or signature of the Trustee.

10.3 Limitation on Discretionary Trust Administrator's Authority. Notwithstanding any other provision in this Agreement, Discretionary Trust Administrator shall not take any of the following actions:

- (a) Exchange the Property for any other property.
- (b) Purchase assets other than short term investments described in Article 5.
- (c) Reinvest any monies of the Trust other than in accordance with Article 5.
- (d) Renegotiate the terms of the Loan or enter into any new financing or otherwise cause the Trust to incur any new indebtedness from any third party.
- (e) Renegotiate the Lease or enter into any new leases, except in the case of Tenant's bankruptcy or insolvency.
- (f) Make other than minor non-structural modifications to the Property, other than as required by law.
- (g) Accept any contributions of money or property from any person other than the Property from Settlor as described in Article 1 and except for money from Beneficial Owners acquiring Beneficial Interests under the Memorandum as described in Article 4.
- (h) Do any other act or thing that would cause the Trust (i) not to be an investment trust within the meaning of Treasury Regulations Section 301.7701-4(c)(1), including without limitation any action that could be construed to vary the investment of Beneficial Owners within the meaning of that Section or (ii) to be treated for Federal income tax purposes other than as described in Section 13.3.

10.4 Certain Acts. Discretionary Trust Administrator shall discharge such administrative requirements as may be necessary or prudent to carry out the duties of the Trust with respect to the Loan and the Lease to the extent that Trustee is not able or willing to do. Discretionary Trust Administrator shall promptly furnish to the Beneficial Owners and other appropriate parties copies of all reports, notices, requests, demands, certificates, financial statements and any other writings pursuant to the terms of the Loan and the Lease that the Beneficial Owners or such other parties have not otherwise received. Discretionary Trust Administrator shall also notify relevant parties of any default under the Loan and the Lease.

10.5 Compensation and Expenses of Discretionary Trust Administrator. Discretionary Trust Administrator shall be entitled to a \$2,500 per annum fee for its services as trustee hereunder, which may be deferred until the sale of the Property. Discretionary Trust Administrator shall be entitled to be reimbursed for its reasonable out-of-pocket expenses hereunder.

Article 11 Term and Termination of Trust

11.1 Termination. The Trust shall dissolve and wind up in accordance with Section 3808 of the Act upon the earlier to occur of (a) the 20th anniversary of the date of this Agreement or (b) the sale, conveyance or other disposition of the Property. notwithstanding the foregoing, for so long as the Loan Documents provide that the Trust shall not dissolve, no dissolution shall occur prior to the date that the Loan has been paid in full (except to the extent dissolution occurs in conjunction with Section 11.4).

11.2 Distribution on Winding Up. The assets of the Trust shall be promptly distributed (but in all events within 90 days after the date of the last Quarterly Distribution Date) in the following rank and order:

(a) *Creditors.* To the creditors of the Trust, in satisfaction of liabilities of the Trust (including the obligation to pay the Trustee and the Discretionary Trust Administrator fees in accordance with Section 3808 of the Act and Sections 9.4 and 10.5 and the Asset Manager in accordance with the Asset Management Agreement), all in the order of priority and to the extent provided by law.

(b) *Beneficial Owners.* Among Beneficial Owners in proportion to their respective Percentage Beneficial Interests in accordance with Article 5.

In the event the Discretionary Trust Administrator determines that it is necessary or desirable to make a distribution of Trust property in kind, such property shall be transferred and conveyed to the Beneficial Owners as tenants in common so as to vest in them undivided interests in the whole of such property in proportion to their respective rights to share in the proceeds of the sale of such property in accordance with the provisions of this Article. All such Trust property shall be valued at fair market value as determined by the Discretionary Trust Administrator and shall be subject to such reasonable conditions and restrictions as are necessary or advisable in order to preserve the value of the assets distributed or for legal reasons.

11.3 Miscellaneous Dissolution Procedures. As part of the winding up of the Trust, a proper accounting shall be made from the date of the last previous accounting to the date of termination. Upon the completion of winding up of the Trust, Management shall cause a Certificate of Cancellation to be filed with the Delaware Secretary of State.

11.4 Transmutation Upon Exigent Circumstances. Notwithstanding anything to the contrary in this Agreement, in the event of "Exigent Circumstances" (as defined herein), but subject to the terms of the Loan under the Loan Documents and the other limitations of this section, Discretionary Trust Administrator shall have the right and power (but, subject to the Loan Documents, not the obligation) to cause the Trust to contribute its assets to, merge with, consolidate with or convert into any other entity formed under the laws of the State of Delaware or the laws of any other state in accordance with Sections 3815 *et seq.*, 3820 *et seq.* or any other section of the Act, whereupon the assets and liabilities of the Trust shall become the assets and liabilities of such other entity, Beneficial Owners (or in the case of a contribution, the Trust) shall become the owner(s) of such other entity (without modification of their economic interests *inter se*) and Discretionary Trust Administrator shall become the controlling person of such other entity. Discretionary Trust Administrator shall have the power to do all acts and things necessary or useful in connection with the foregoing, including without limitation to execute deeds and other instruments of conveyance. By way of illustration and not by way of limitation, the Trust may be converted into a limited liability company in which Beneficial Owners are the members and Discretionary Trust Administrator is the manager. A form of limited liability company operating agreement is annexed hereto as EXHIBIT 2. Should Exigent Circumstances occur and should Discretionary Trust Administrator elect (or be required by the Loan Documents) to cause the Trust to contribute its assets to, merge with, consolidate with or convert into a limited liability company in accordance with this Section, Beneficial Owners agree that they shall be bound by the terms of said limited liability company operating agreement and become the members thereof and Discretionary Trust Administrator shall become the manager thereof. In addition, the parties to this Agreement shall execute all documents required by the Lender to evidence the assumption of the Loan by the limited liability company and to ensure that Lender's security interest (created and granted by the documents evidencing the Loan) remains perfected. Should Discretionary Trust Administrator elect (or be required by the Loan Documents) to cause the Trust to contribute its assets to, merge with, consolidate with or convert into any other type of entity, the organizational documents for such other entity shall be as Discretionary Trust Administrator shall present to Beneficial Owners so long as the same is in general conformity with the limited liability company operating agreement annexed hereto as EXHIBIT 2, modified appropriately to reflect the organic differences of such other entity. Exigent Circumstances shall have occurred in the following

circumstances only: (a) an event of default has occurred under the Loan or the Lease that may result in foreclosure of the Loan or the termination of the Lease by the Tenant. (b) there has occurred an event or circumstance that after notice or lapse of time would constitute an event of default under the Loan or the Lease that may result in foreclosure of the Loan or the termination of the Lease by the Tenant. (c) the Loan must be refinanced in order to repay the same as it matures. or (d) the limitations on the Discretionary Trust Administrator's authority under this Agreement would result in the Trust being unable to take an action that, if not taken, could have a material adverse effect upon the Trust or the Property (including without limitation a material adverse effect upon on the ability of the Trust, now or in the foreseeable future, to discharge its lawful obligations on a timely basis). Discretionary Trust Administrator shall not be deemed possessed of the rights under this section for as long as Discretionary Trust Administrator has sufficient authority to take commercially reasonable steps (not barred by Section 10.3) to substantially mitigate the Exigent Circumstances. Should the documents evidencing and securing the Loan require that the Trust contribute its assets to, merge with or consolidate or convert into a Delaware limited liability company whose operating agreement is in the form attached hereto as EXHIBIT 2, the Discretionary Trust Administrator shall cause the Trust to merge, consolidate or convert as so required. Each Beneficial Owner acknowledges that in the event the Trust contributes its assets to, merges with, consolidates with or converts into a limited liability company in accordance with this section, the Beneficial Owners may not avail themselves of the benefits of Section 1031 of the Internal Revenue Code upon a disposition of the Property.

Article 12
Successors

***The provisions of this Article are in all respects subject to
the limitations and other provisions of Article 14.***

12.1 Resignation and Removal of Management. Except as otherwise provided in the Loan Documents, Trustee and Discretionary Trust Administrator may resign by giving not less than 30 days prior written notice thereof to the other and to the Beneficial Owners. Notwithstanding anything herein to the contrary, no such resignation shall be effective until a successor trustee has been appointed and such successor has accepted its responsibilities in writing. Discretionary Trust Administrator has the right to remove Trustee by giving the latter not less than 30 days prior written notice of the same. Discretionary Trust Administrator shall not be subject to removal, except that, subject to the Loan Documents, Beneficial Owners holding a majority of the Beneficial Interests may remove Discretionary Trust Administrator if Discretionary Trust Administrator has been adjudicated as having committed willful misconduct, fraud or gross negligence with respect to the Trust.

12.2 Appointment of Successors. In the event of the resignation or removal of a Trustee or Discretionary Trust Administrator, a successor shall be appointed (a) in the case of a vacancy of the Trustee, by the Discretionary Trust Administrator and (b) in the case of a vacancy by of the Discretionary Trust Administrator, by Beneficial Owners holding a majority of the Percentage Beneficial Interests. In the event that a vacancy shall not have been appointed within 60 days after the giving of notice in accordance with Section 12.1, the other (Trustee or Discretionary Trust Administrator, as the case may be) or any Beneficial Owner may apply to any court of competent jurisdiction in the United States to appoint a successor to act until such time, if any, as a successor shall have been appointed as provided above. Any successor so appointed by such court shall immediately and without further action be superseded by any successor appointed as provided above within one year from the date of the appointment by such court.

12.3 Successor Trustee. Any successor Trustee, however appointed, shall be a bank or trust company with its principal place of business in the State of Delaware and either (a) having a combined

capital and surplus of at least \$50,000,000 or (b) having the performance of its obligations hereunder guaranteed by such a bank or trust company having a combined capital and surplus of at least \$50,000,000, if there is such an institution willing, able and legally qualified to perform the duties of trustee hereunder upon reasonable or customary terms. Any corporation into which Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Trustee may be transferred, shall, subject to the preceding sentence, be Trustee under this Agreement without further act. Any successor Trustee, however appointed, shall be competent and qualified to (y) serve as a trustee of a statutory trust formed pursuant to the Act and (z) take all actions required by Trustee pursuant to this Agreement and the Act. Any successor Trustee shall file an amendment to the certificate of trust as required by the Act.

12.4 Powers, Rights and Duties of Successors. Each successor shall have all of the right, title and interest in and to each asset of the Trust and all powers and discretions which are then vested in its predecessor, without the necessity of any document or instrument of conveyance or transfer. provided, however, that any predecessor shall, to the extent possible, execute all documents and do all acts necessary or reasonably requested to vest and indicate such right, title and interest, powers and discretions in such successor.

12.5 Liability of Successors. No successor shall be liable for the acts or defaults of any predecessor, or for any loss or expense from anything done or neglected to be done by any predecessor, but such successor shall be liable only for his own willful wrongdoing or gross negligence.

Article 13 Fiscal Matters

13.1 Accounts. At all times during the continuance of the Trust, Discretionary Trust Administrator shall cause proper and true books of account to be maintained in conformity with sound accounting principles consistently applied wherein there shall be entered particulars of all monies and other effects belonging to or owing to or by the Trust, or paid, received, sold or purchased in the course of the Trust's activities, and all of such other transactions, matters and things relating to the Trust as are usually entered in books of account kept by investment trusts engaged in activities of a like kind and character. Nothing herein contained shall be construed to permit the maintenance of capital accounts or other business entity-like books, records or accounts.

13.2 Reports. The Trust's books of account shall be closed as soon as practicable after the close of each calendar year (which shall be the Trust's "Fiscal Year"). Discretionary Trust Administrator shall thereafter provide a written report to each Beneficial Owner containing such statements as shall be necessary to advise all Beneficial Owners properly about their interests in the Trust for income tax reporting purposes. Discretionary Trust Administrator shall provide to Lender such reports as may be required of the Trust under the documents evidencing and securing the Loan.

13.3 Tax Status. For Federal income tax purposes, the Trust shall be a so-called "grantor trust" under Subchapter J of the Internal Revenue Code (Section 671 *et seq.*) and more specifically it shall be regarded as an investment trust under Treasury Regulations Section 301.7701-4(c). Discretionary Trust Administrator shall make all tax filings and render all tax statements in a manner consistent with the foregoing and each Beneficial Owner shall report its interest in the Trust in a manner that comports with the foregoing. The Beneficial Owners expressly agree that the Trust should be excluded from the application of Subchapter K of Chapter 1 of the Internal Revenue Code, pursuant to Section 761(a) of the Internal Revenue Code and Treasury Regulations Section 1.761-2, and authorize the Discretionary Trust

Administrator to make any filings and do any other things necessary or desirable to give effect to the same.

Article 14
Special Purpose Entity Provisions

14.1 Supremacy of this Article. This Article has been adopted in order to comply with certain provisions of the Loan Documents that require the Trust to qualify as a so-called special purpose bankruptcy-remote entity. This Article is written for the express benefit of the Lender and shall supersede any inconsistent provision of this Agreement.

14.2 Limitation of Purpose. The purpose of the Trust is as set forth in Article 3 and the Trust shall not engage in any other business or activity and shall not own any assets or incur any obligations other than in furtherance of such limited purpose.

14.3 Definitions Used in this Article. When used in this Article, the following terms have the following meanings (and supersede any inconsistent definitions used elsewhere in this Agreement):

(a) "Affiliate" shall mean, as to any person, any other person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such person or is a director or officer of such person or an Affiliate of such person.

(b) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a person shall be deemed to Control any other person in which it owns, directly or indirectly, a majority of the ownership interests. The manager of a limited liability company shall always be deemed to control such company and the general partner of a partnership shall always be deemed to control such partnership.

(c) "Loan Obligations" means collectively, the indebtedness, liabilities and obligations of the Trust to Lender under or in connection with this Agreement, the Loan Documents or any related document in effect as of any date of determination, including without limitation the outstanding principal balance of the Loan, together with all interest accrued and unpaid thereon and all other sums (including any yield maintenance premium) due to Lender in respect of the Loan under the Loan Documents.

(d) "Material Action" means to do any of the following:

- (i) Institute proceedings to have the Trust adjudicated bankrupt or insolvent.
- (ii) Consent to the institution of bankruptcy or insolvency proceedings against the Trust.
- (iii) File a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Trust or a substantial part of its property.
- (iv) Make any assignment for the benefit of creditors of the Trust.

- (v) Admit in writing the Trust's inability to pay its debts generally as they become due.
- (vi) Declare or effectuate a moratorium on the payment of any obligation.
- (vii) Take any action in furtherance of any of the foregoing.

14.4 Intentionally Omitted.

14.5 Intentionally Omitted.

14.6 Special Purpose Covenants. Until such time as no Loan Obligations remain outstanding:

- (a) Management and the Member shall not:
 - (i) Amend, alter, change or repeal Article 3 [Purpose of the Trust] or this Article,
 - (ii) Amend this Agreement, or
 - (iii) Permit the Trust to take any Material Action,

without in each case the written consent of the Lender.

(b) The Trust shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises and observe all limited liability company formalities.

(c) The Trust shall not at any time (defined terms used in this paragraph not otherwise defined in this Agreement shall have the meanings given to them in the Loan Agreement):

- (i) Engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Property, and activities incidental thereto;
- (ii) Acquire or own any material asset other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;
- (iii) Merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;
- (iv) Fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Trust's Certificate of Trust and this Agreement;
- (v) Own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Lender;

- (vi) Commingle its assets with the assets of the DTA, any of the beneficiaries or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in Trust permitted hereunder and properly accounted for;
- (vii) Incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except (i) unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding Loan, and (ii) unsecured debt to Affiliates of Trust, which debt is subordinate to the Loan and is incurred in order to cover shortfalls in Trust's budget;
- (viii) Allow any person or entity to pay its debts and liabilities or fail to pay its debts and liabilities solely from its own assets;
- (ix) Fail to maintain its records, books of account and bank accounts separate and apart from those of the DTA, any of the beneficiaries and any other person or entity or fail to prepare and maintain its own financial statements in accordance with the Approved Accounting Method consistently applied and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by Trust;
- (x) Enter into any contract or agreement with any shareholder, partner, member, principal or Affiliate of Trust, any guarantor of all or a portion of the Indebtedness or DTA, any of the beneficiaries or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or Affiliate of Trust, or any shareholder, partner, member, principal or Affiliate thereof;
- (xi) Seek dissolution or winding up, in whole or in part.
- (xii) Fail to correct any known misunderstandings regarding the separate identity of Trust;
- (xiii) Guaranty or become obligated for the debts of any other entity or person or hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit-worthiness for the debts of Trust;
- (xiv) Make any loans or advances to any third party, including the DTA, any of the beneficiaries or Affiliate thereof;
- (xv) Fail to file its own tax returns or to use separate contracts, purchase orders, invoices and checks;

- (xvi) Fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Trust is responsible for the debts of any third party (including DTA, any of the beneficiaries or Affiliate thereof);
- (xvii) Fail to allocate fairly and reasonably among Trust and any third party, any overhead for common employees, shared office space or other overhead and administrative expenses;
- (xviii) Allow any person or entity to pay the salaries of Trust's employees or fail to maintain a sufficient number of employees for Trust's contemplated business operations; provided, however, that this provision shall not require Trust to hire any new employees or require DTA or any of the beneficiaries of Trust to make any additional capital contributions.
- (xix) Fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. provided, however, that this provision shall not require Trust to hire any new employees or require DTA or any of the beneficiaries of Trust to make any additional capital contributions.
- (xx) File a voluntary petition or otherwise initiate proceedings to have Trust or any general partner or managing member adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against Trust or DTA, or file a petition seeking or consenting to reorganization or relief of Trust or DTA as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to Trust or any general partner or managing member; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Trust or DTA or of all or any substantial part of the properties and assets of Trust or DTA, or make any general assignment for the benefit of creditors of Trust or DTA, or admit in writing the inability of Trust or DTA to pay its debts generally as they become due or declare or effect a moratorium on Trust or DTA debt or take any action in furtherance of any such action;
- (xxi) Share any common logo with or hold itself out as or be considered as a department or division of (A) DTA, any of the beneficiaries or Affiliate of Trust, (B) any Affiliate of DTA, any of the beneficiaries or Affiliate of Trust, or (C) any other person or entity or allow any person or entity to identify Trust as a department or division of that person or entity;
- (xxii) hold itself out as or be considered as a department or division of (i) any Guarantors or Affiliate of DTA, (ii) any Affiliate of Guarantors, or (iii) any other Person or allow any Person to identify the Borrower as a department or division of that Person; or
- (xxiii) Conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Trust or the creditors of any other person or entity.

Article 15
General Provisions

15.1 Notice. All notices, requests, demands and other communications required to or permitted to be given under this Agreement, shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered. or (b) the next business day after same have been deposited with a national overnight delivery service (e.g., FedEx) – in each case addressed to the parties as follows:

If to Trustee:	Delaware Trust Company 251 Little Falls Drive Wilmington, Delaware 19808 Attn: Trust Administration Facsimile: 302-636-8666
If to Discretionary Trust Administrator:	SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC c/o Syndicated Equities Group, LLC 350 N LaSalle Street, Suite 800 Chicago, Illinois 60654
If to the Beneficial Owners:	At the address set forth in the Discretionary Trust Administrator's records

A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other parties written notice of the new address in the manner set forth above.

15.2 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Beneficial Owners and their respective heirs, executors, administrators, successors and assigns.

15.3 Entire Agreement. No Modification. No Waiver. This Agreement and any agreement, document or instrument referred to herein constitute the entire agreement among Management, Settlor and Beneficial Owners pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings among them. o supplement, modification or amendment of this Agreement shall be permitted (without limiting the generality of the foregoing, for as long as the Company remains obligated with respect to the Loan, no modification may be made to Articles 3 or 14 of this Agreement without the written approval of the Lender). No waiver of any of the provisions of this Agreement shall be permitted.

15.4 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid, in whole or in part for any reason, such illegal, unenforceable or invalid provision or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

15.5 Further Assurances. Each Beneficial Owner agrees to execute, with acknowledgment and affidavit if required, any and all documents and take all actions that may be reasonably required in furtherance of the provisions of this Agreement.

15.6 Attorneys' Fees. To the fullest extent permitted by applicable law, if any party to this Agreement shall take any action to enforce this Agreement or bring any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the non-prevailing party shall pay to the prevailing party a reasonable sum for attorney's fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. To the fullest extent permitted by applicable law, any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this Section, attorney's fees shall include, without limitation, fees incurred in the following: (a) post-judgment motions and collection actions, (b) contempt proceedings, (c) garnishment, levy and debtor and third party examinations, (d) discovery and (e) bankruptcy litigation.

15.7 Governing Law. This Agreement, and the Beneficial Owners' respective rights and obligations hereunder, shall be governed by and construed in accordance with the laws of the State of Delaware.

15.8 Dispute Resolution.

(a) *Non-Binding Mediation.* If a dispute between the parties arises out of or relates to this Agreement, or the breach thereof, the parties agree to attempt good faith settlement negotiation through non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures ("Mediation").

- (i) Mediation shall be instituted by submission to the AAA of a completed AAA Request for Mediation (or similar form or process specified by AAA), which shall be served on all parties in accordance with the notice provisions of this Agreement within three business days of submission of the Request for Mediation to the AAA.
- (ii) The parties agree to use a single mutually acceptable mediator. If the parties are unable to select a mutually acceptable mediator within 20 days after submission of the Request for Mediation, the AAA shall assign a mediator.
- (iii) Mediation commences upon the selection of a mutually acceptable mediator by the parties or upon the appointment of a mediator by the AAA in accordance with clause (ii) (the "Mediation Commencement Date").
- (iv) The Mediation will be conducted in Chicago, Illinois.
- (v) The fees and expenses associated with the Mediation will be divided equally between or among the parties to the dispute. Each party to the dispute will be responsible for its own attorney's fees and costs incurred in connection with the mediation.
- (vi) In the event the parties have been unable to resolve their dispute within 60 days after the Mediation Commencement Date (the "Mediation Period"), then any of the parties may commence any other dispute resolution procedures provided for in this Section. For clarity, if no party has filed a Request for Mediation, no party may commence any other dispute resolution procedure provided for in this Section. If any party files a Request for Mediation, then unless a binding settlement has been reached by the parties during the Mediation Period, no party

may commence any other dispute resolution procedure provided for in this Section until after the Mediation Period.

(vii) Notwithstanding anything to the contrary herein:

- (A) The requirement to mediate contained in this paragraph shall not be construed to delay or otherwise interfere with the ability of a party to commence any emergency injunctive action that a party may bring.
- (B) The requirement to mediate contained in this paragraph shall not apply to any matter in dispute with respect to which the applicable statute of limitations has fewer than 90 days to run.

(b) *Jurisdiction, Venue and Service of Process.* The Trust and the parties to this Agreement hereby irrevocably and unconditionally agree that any suit, action or proceeding arising out of or related to this Agreement or the Trust shall be brought only in the United States District Court for the Northern District of Illinois or in the Circuit Court of Cook County, Chicago, Illinois, and the specific choice from among the foregoing shall be determined by the party initiating such suit, action or proceeding. To the fullest extent permissible by law, the Trust and the parties to this Agreement hereby consent to the personal jurisdiction, venue and forum of such courts and hereby irrevocably and unconditionally waive any claim or objection that it is not subject to the jurisdiction of such courts, that the venue is improper, that the forum is inconvenient or any similar objection, claim or argument. Service of process on any of the parties hereto with regard to any such action may be made and is considered legally proper by mailing the process to such person by certified mail to the address of such person as provided in Section 15.1 or to any subsequent address to which notices shall be sent.

(c) *Waiver of Trial by Jury.* Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury with respect to any litigation directly or indirectly arising out of or relating to this Agreement. Each party understands and has considered the implications of this waiver. Each party makes this waiver voluntarily.

(d) *Attorney's Fees and Costs.* If the Trust, any Beneficial Owner or Discretionary Trust Administrator obtains a judgment in connection with a dispute arising under or in connection with any this Agreement, such party shall be entitled to recover from the non-prevailing party its court costs and reasonable attorney's fees and costs incurred in connection therewith, and in any appeal or enforcement proceeding thereafter, in addition to all other recoverable costs.

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

15.10 Manner of Execution and Transmission.

(a) *Manner of Execution.* This Agreement may be executed (i) as an original in ink, (ii) by facsimile signature (e.g., a signature reproduction by physical or electronic stamp) or (iii) by any electronic signature complying with (A) the U.S. Federal ESIGN Act of 2000, (B) the laws of the State of Delaware and/or (C) with respect to a particular person signing this Agreement, the laws of the state in which such person executed this Agreement.

(b) *Manner of Transmission.* Any counterpart containing a qualifying signature transmitted electronically (e.g., via e-mail or telecopier machine) shall be accepted as an original and shall have the same force and effect as an original.

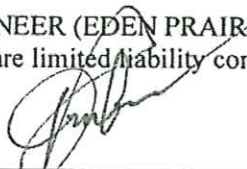
15.11 No Reliance. Each Beneficial Owner expressly acknowledges that, together with its own professional advisors and legal counsel, it has performed its own due diligence and legal analysis relating to the Trust, the Property and all associated financial, tax (including in relation to Section 1031 of the Code), legal and other issues as it had deemed necessary or appropriate to make an informed investment decision. Each Beneficial Owner and Settlor expressly acknowledge that neither Management nor its affiliates nor Discretionary Trust Administrator's counsel Levenfeld Pearlstein, LLC nor the Lender have in any way whatsoever acted as an advisor to any Beneficial Owner with respect to the foregoing and agrees that neither Management nor its affiliates nor Discretionary Trust Administrator's counsel Levenfeld Pearlstein, LLC nor the Lender shall have any responsibility or express or implied liability whatsoever with respect to any of the foregoing. This Agreement was prepared by Discretionary Trust Administrator's counsel Levenfeld Pearlstein, LLC at the request and at the direction of Discretionary Trust Administrator and its affiliates. Said firm is acting as counsel to Discretionary Trust Administrator and its affiliates and has done so in the past and has not been engaged to advise or represent and is not acting as counsel to any Beneficial Owner. Beneficial Owners must consult with and rely on their own counsel and advisors concerning the financial, tax, legal and other consequences of this Agreement and an investment in the Property.

[Signatures begin on the next page]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date written above.

SETTLOR:

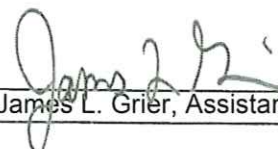
SE 13200 PIONEER (EDEN PRAIRIE) SPONSOR,
LLC, a Delaware limited liability company

By: 
Richard Kaplan, Manager

c/o Syndicated Equities Group, LLC
350 N. LaSalle Street, Suite 800
Chicago, Illinois 60654

TRUSTEE:


DELAWARE TRUST COMPANY

By: 
Its: James L. Grier, Assistant Vice President

251 Little Falls Drive
Wilmington, Delaware 19808

DISCRETIONARY TRUST ADMINISTRATOR:

SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC,
a Delaware limited liability company

By: 
Richard Kaplan, Manager

c/o Syndicated Equities Group, LLC
350 N. LaSalle Street, Suite 800
Chicago, Illinois 60654

EXHIBIT 1

JOINDER TO TRUST AGREEMENT

of

SE 13200 PIONEER (EDEN PRAIRIE), DST

a statutory trust formed under the laws of the State of Delaware

THIS JOINDER TO TRUST AGREEMENT (this "Joinder") is made with reference to SE 13200 PIONEER (EDEN PRAIRIE), DST, a Delaware statutory trust (the "Trust").

A. The Trust currently subsists pursuant to that certain Trust Agreement of SE 13200 PIONEER (EDEN PRAIRIE), DST dated _____, 2021 (the "Trust Agreement").

B. Beneficial Interests (as defined in the Trust Agreement) are being issued to certain persons pursuant to that certain Confidential Private Placement Memorandum of SE 13200 PIONEER (EDEN PRAIRIE), DST dated _____, 2021. The undersigned ("Joinder Party") is acquiring Beneficial Interests from another holder of Beneficial Interests.

C. In order for the Joinder Party to be recognized as a holder of Beneficial Interests, Joinder Party must agree to be bound by the provisions of the Trust Agreement and the Discretionary Trust Administrator (as defined in the Trust Agreement) is willing (by its signature below) to recognize Joinder Party as a holder of Beneficial Interests provided that Joinder Party agrees to be bound by the provisions of the Trust Agreement.

NOW THEREFORE, Joinder Party hereby agrees to the Terms and Conditions set forth immediately following the signatures to this Joinder.

JOINDER PARTY:

DISCRETIONARY TRUST
ADMINISTRATOR:

Name of Individual Investor or Entity Investor

SE 13200 PIONEER (EDEN PRAIRIE) DTA,
LLC,
a Delaware limited liability company

Signature of Individual or Entity Representative

Title of Entity Representative (if applicable)

By: _____
Richard Kaplan, Manager

Address: _____

**THE FOLLOWING TERMS AND CONDITIONS ARE AN INTEGRAL PART OF THIS
ASSIGNMENT.**

1. By virtue of its execution of this Joinder, Joinder Party joins in the Trust Agreement as fully and effectually as if it had set its signature to an original or counterpart thereof.
2. Joinder Party agrees to perform and abide by all of the terms, covenants and conditions of the Trust Agreement and agrees that Joinder Party's Beneficial Interest will at all times be governed by the Trust Agreement.
3. This Joinder shall be (a) binding on Joinder Party and its successors and assigns. (b) governed by and construed in accordance with the laws of the State of Delaware. and (c) binding if executed in separate and/or multiple counterparts.
4. Joinder Party shall be liable to pay or reimburse all costs and other expenses incurred in relation to an assignment or other transfer of Beneficial Interests to Joinder Party (including those that may be imposed by the Lender).

[END OF JOINDER]

EXHIBIT 2

FORM OF OPERATING AGREEMENT

EIN: _____

OPERATING AGREEMENT
of
SE 13200 PIONEER (EDEN PRAIRIE), LLC

THIS AGREEMENT is made and entered into as of _____, 20____, by the persons listed on EXHIBIT A attached hereto (each a “Member” and collectively, the “Members”). SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC, a Delaware limited liability company, shall serve as the “Manager” of the Company in accordance with Article 8.

Article 1
Select Definitions and Rules of Construction

1.1 Select Definitions. The following terms shall have the following meanings when used in this Agreement (in general, terms that are used only in a single section, paragraph or clause of this Agreement will be defined in such section, paragraph or clause and are not listed below):

“Act” means the Limited Liability Company Act from time to time in force in the State.

“Agreement” means this Operating Agreement, as originally executed and as amended, modified, supplemented or restated from time to time, together with any exhibits hereto.

“Base Rate” means a variable rate per annum equal to the prime rate of interest at large US money center banks most recently published in The Wall Street Journal (US Edition) or similar publication if The Wall Street Journal (US Edition) is not available.

“Capital Percentage” means, as to a Member at any given time, the percentage equal to the fraction the numerator of which is such Member’s aggregate capital contributions to the Company (whether or not returned) and the denominator of which shall be the sum of the aggregate capital contributions to the Company (whether or not returned) of all Members. Each Member’s initial Capital Percentage shall initially correspond to the Member’s beneficial percentage interest in the Trust.

“Charter” means the articles of organization, certificate of formation or similar instrument, as amended from time to time, issued by the State evidencing the formation of the Company. The Charter was issued on _____, 2021, and bears State File No. _____.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Company” means the limited liability company formed upon the filing of the Charter and whose affairs are governed by this Agreement.

“Lease” means – see the definition of “Property” herein.

“Lender” means (i) _____ and its successors and assigns and (ii) any other lender of a Loan.

“Loan” means (i) the loan originally made to the settlor of the Trust by the Lender and thereafter assumed by the Company or (ii) any other loan the proceeds of which refinance a Loan in whole or in part.

“Loan Documents” means the documents evidencing and securing the Loan.

“Management” is a reference to the person or persons vested with the authority to manage the Company’s affairs, namely, the Manager. The Company is a “manager-managed” limited liability company. See Article 8.

“Manager” means each person identified as such in this Agreement, including any person subsequently appointed as a Manager in accordance with Article 8. Insofar as a Manager has made any capital contributions to the Company and/or possesses a right to receive distributions under Article 6, the Manager shall also be considered a Member.

“Member” means each person identified as such in this Agreement, including any person subsequently admitted to the Company as a Member in accordance with Article 10.

“Property” means the real property commonly known as 13200 Pioneer Trail, Eden Prairie, Minnesota, and all improvements, additions, replacements, easements and any and all other rights appurtenant thereto, and all personal property that might be used or useful in connection therewith. The Property includes, without limitation, all of the landlord’s rights and obligations in any leases of the Property.

“State” means the State of Delaware, which has issued the Company’s Charter.

“Trust” means SE 13200 PIONEER (EDEN PRAIRIE), DST, a Delaware statutory trust that was the Company’s predecessor entity.

1.2 Rules of Construction.

(a) The term “affiliate” is to have a meaning reasonably appropriate to its context. without limiting the generality of the foregoing, when used in connection with conduct that by the terms of this Agreement is to be proscribed or circumscribed, the term shall be interpreted broadly. Without limiting the generality of the foregoing, an affiliate of a specified person is a person who (i) controls, is controlled by or is under common control with the specified person, (ii) is a manager, director, officer or general partner of the specified person (or a person who serves in a similar capacity with respect to a specified person) or (iii) is related to a specified person by blood or marriage.

(b) The words “control,” “controls” and “controlled” mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of another person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise.

(c) The term “party” means a signatory to this Agreement, including a Member, member of Management and any successor to any of the foregoing, whether or not such successor has executed or otherwise joined in this Agreement. The fact that a successor is a party shall not give that person any greater rights than it has under the express terms of this Agreement. By way of illustration, a successor who has not been admitted to the Company in accordance with Article 10 is a party to this Agreement for purposes of the dispute resolution procedures in Section 20.8, but despite being a party is still subject to the limitations of Section 10.4(c).

(d) The term “person” refers to an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, a series or cell of a series organization, association, joint stock company, statutory trust, common-law trust, club, unincorporated organization, government authority, parastatal organization or any other organization, whether or not a legal entity.

(e) The term “subsidiary” means any incorporeal person that is owned or controlled directly or indirectly by the Company.

(f) All pronouns shall include the masculine, feminine or neuter thereof, wherever the context and facts require such construction.

(g) All terms defined in this Agreement in the singular have the same meanings when used in the plural and vice versa.

(h) The use of the word “including” herein shall not be considered to limit the provisions which it modifies but instead shall mean “including without limitation” unless the provision states otherwise.

(i) No distinction in interpretation shall be made between the terms “shall” and “will.”

(j) An “Article” of this Agreement is typically identified with a number (e.g., “Article 1”). A “Section” of this Agreement corresponds to an Article and is typically identified with a number that includes a decimal (e.g., “Section 1.2”). A “paragraph” of this Agreement corresponds to a Section and is typically identified by a lower case letter (e.g., paragraph “(j)”). A “clause” of this Agreement corresponds to a paragraph and is typically identified with a roman numeral or an upper case letter (e.g., “(i),” “(B)” or “(III)”).

(k) Headings, titles and subtitles are inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

(l) Except where express reference is made to “business days,” references in this Agreement to a number of days within which an action must be taken (including the giving of notice or the delivery of documents) shall mean calendar days. Notwithstanding the preceding sentence, whenever the final day on which an action must be taken (including the giving of notice or the delivery of documents) occurs on a non-business day (*i.e.*, Saturday, Sunday or a holiday recognized by the U.S. Federal government, the State or the state in which the Company’s principal office is located), then such period or date shall be extended until the immediately following business day.

(m) In the interpretation of this Agreement, the parties agree (i) that no inference shall be drawn from the fact that a provision not included in this Agreement was included and then deleted from a draft of this Agreement and (ii) that this Agreement is the joint work product of the parties and the doctrine of *contra proferentem* (*i.e.*, interpretation against the draftsman) shall not be applicable.

Article 2 Organizational Matters

2.1 Formation and Statutory Authority.

(a) *Formation.* The Company was formed upon the issuance of the Charter by the State. The Members and Management hereby ratify and adopt the acts and conduct of the Company’s organizer in connection with the filing of the Charter as acts and conduct by and on behalf of the Company. The

organizational and other activities for which the organizer was responsible have been completed and the organizer is hereby relieved of any further duties and responsibilities in that regard. the organizer is hereby released and indemnified by the Company from any liability on account of its actions in connection with the formation of the Company.

(b) *Statutory Authority.* The Company shall operate as a limited liability company in accordance with this Agreement and the Act. The rights and obligations of the Members and Management in relation to the Company and among themselves shall be determined in accordance with this Agreement and the Act. To the extent that anything contained in this Agreement conflicts with the Act, or modifies, supplements or otherwise affects any rights or obligations under the Act, this Agreement shall supersede the Act, except to the extent expressly restricted by the Act.

2.2 Filings. The Company shall make such filings and do or cause to be done such other acts and things as shall be required to continue the existence of the Company in the State and shall cause the Company to be qualified or registered under assumed or fictitious names statutes or similar laws in any jurisdiction in which the Company owns property or transacts business to the extent the same is necessary or, in the judgment of Management, advisable in order to protect the limited liability of the Members or to permit the Company to lawfully own property or transact business. The Company shall, to the extent the same is necessary or, in the judgment of Management, advisable, execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Company lawfully to own property and conduct business as a limited liability company in all jurisdictions where the Company elects to own property or transact business and to maintain the limited liability of the Members.

2.3 Name. The name of the Company is the name set forth in the heading of this Agreement. The affairs of the Company shall be conducted under the Company name or such other names as Management may select in accordance with the Act. If the Company uses a fictitious or assumed name, Management shall execute and file all certificates required by any jurisdiction in which the activities of the Company make it necessary or desirable to do so. The Company shall have the exclusive ownership of and right to use the Company name and any other names under which the Company conducts its affairs.

2.4 Principal Office of the Company. The principal office of the Company shall be located at such place within or outside the State as Management may from time to time designate. The Company may have secondary offices at such other place or places as Management may from time to time designate.

2.5 Records to be Maintained. Management shall at all times during the continuance of the Company keep at the Company's principal office such records and information as the Company may be required to maintain in accordance with the Act.

2.6 Registered Office and Registered Agent. Management shall designate a registered office and a registered agent in accordance with the Act. Management has the right to change the Company's registered office and/or registered agent from time to time in accordance with the Act. Management shall select and designate a registered office and registered agent for the Company in each other state in which the Company is required to maintain or appoint one.

2.7 Conversion, Domestication and Divisions. *Conversion.* Notwithstanding anything to the contrary in this Agreement, Management shall have the right and power in its sole discretion to cause the Company to contribute its assets to, merge with, consolidate with or convert into any other entity formed under the laws of the State or the laws of any other state in accordance with the Act (including without limitation a limited partnership, a limited liability partnership, a corporation or a statutory or other trust),

whereupon the assets and liabilities of the Company shall become the assets and liabilities of such other entity, the Members or, in the case of a contribution, the Company, shall become the owner(s) of such other entity (without modification of their economic interests inter se), and Management shall become the controlling person of such other entity. By way of illustration and not by way of limitation, the Company may be (i) converted into a limited liability company under the laws of another state or (ii) converted into a limited partnership (under the laws of the State or any other state) in which Members are limited partners and Management is the general partner. Should the Company merge with, consolidate with or convert into another entity in accordance with this Section, Members shall be bound by the terms of the organizational documents of such entity as presented by Management. Such organizational documents (viewed as if they were amendments to this Agreement) shall comport with Section 17.1. The execution of such organizational documents (viewed as if they were amendments to this Agreement) shall be subject to Section 17.2.

(b) *Domestication.* Management shall have the right and power to cause the Company to domesticate itself under the laws of any other state, make such filings with the State and such other state as Management may determine is necessary or useful and make conforming amendments to this Agreement. Such amendments shall comport with Section 17.1 and the execution of such amendments shall be subject to Section 17.2.

(c) *Divisions.* Management shall have the right and power to cause the Company to divide itself into one or more separate limited liability companies (a "Company Division") if the laws of the State permit a Company Division. In connection therewith, Management shall (to the extent required by the applicable laws of the State) adopt a plan of division, make filings with the State and do all such other acts and things as Management may determine is necessary or useful to give effect to the Company Division. Without limiting the generality of the foregoing, the plan of division may (i) allocate the assets, rights, series, debts, liabilities and duties of the Company between the Company and any resulting limited liability company, (ii) set forth the amendments to be made to this Agreement and (iii) set forth the terms of the new operating agreement for any resulting limited liability company. Any amendment to this Agreement and any new operating agreement for a resulting limited liability company (viewed as if it were an amendment to this Agreement) shall not contravene the limitations of Section 17.1(c) and the execution of such amendment or any new operating agreement for a resulting limited liability company shall be subject to Section 17.2. Except for Section 5.1, no provision of this Agreement that is replicated in a new operating agreement for a resulting limited liability company shall be considered to be in contravention of Section 17.1(c).

(d) *Combination of Steps.* The Company may engage in any combination of actions described in the preceding paragraphs as part of a broader plan of reorganization. By way of illustration and not limitation, the Company may domesticate itself under the laws of another state pursuant to paragraph (b) in order to be eligible to engage in a Company Division pursuant to paragraph (c) and then convert a resulting company under paragraph (c) into a limited partnership pursuant to paragraph (a).

2.8 Series. In accordance with the Act, Management may designate one or more series of limited liability company interests (referred to herein collectively as "Series"). As Management may specify in either an amendment to this Agreement or in a separate operating agreement for a Series, a Series may have separate (a) business purposes or investment objectives, (b) assets, (c) members and managers (and specified rights, powers, duties, obligations and responsibilities of members and managers), (d) provisions for contributions and distributions and (e) other provisions. With respect to a Series, Management shall have the same authority as it has with respect to the Company under Section 8.2. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a Series shall be enforceable against the assets of such Series only, and not against the assets of the Company generally or against any other Series. With respect to any Series, none of the debts,

liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the Company generally or any other Series shall be enforceable against the assets of such Series.

Article 3
Purpose of the Company

The sole purpose of the Company is to engage in the following activities:

- (a) To acquire, own, hold, lease, operate, manage and maintain the Property (or an undivided interest therein) and to contract for the operation, maintenance and management of the Property.
- (b) To enter into and perform its obligations under the Loan Documents.
- (c) To sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property to the extent permitted under the Loan Documents.
- (d) To engage in any lawful act or activity and to exercise any powers permitted to an entity such as the Company that is organized under the laws of its jurisdiction of formation that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

Article 4
Duration of the Company

4.1 Duration of the Company. The Company shall continue in perpetuity unless sooner dissolved in accordance with the other provisions of this Article.

4.2 Winding-Up. The Company shall commence a winding-up of its affairs upon the earliest of:

- (a) *Disposition of All or Substantially All of its Non-Cash Assets.* The sale or other disposition of all or substantially all of the Company's non-cash assets. but if the foregoing sale or other disposition involves (i) the receipt of a deferred payment obligation, whether or not secured, or (ii) the receipt of payment in whole or in part in-kind, then at Management's election the term of the Company shall not end, and it shall continue, subject to the other provisions of this Agreement, until the earlier of the time that (A) the deferred payment obligation shall have been paid in full, (B) the in-kind considerations received by the Company shall have been sold or otherwise converted to cash or (C) Management elects to distribute the deferred payment obligation or in-kind considerations.
- (b) *Decision of Management.* Management's decision to do so.
- (c) *Judicial Dissolution.* Upon the entry of a judicial decree of dissolution of the Company in accordance with the Act.

The winding-up of the Company shall be conducted in accordance with this Agreement generally and Article 18 in particular.

4.3 Continuation of Company Upon Certain Events. The death, disability, court declaration of incompetence, bankruptcy, dissolution, liquidation or other dissociation of a Member shall not dissolve the Company, but it shall be continued with the successor or legal representative of such Member. such successor or legal representative shall, to the extent of the interest acquired, be entitled only to the

predecessor Member's rights, if any, in the distributions of the Company, and no such person shall have any right to participate in the management of the affairs of the Company or vote on any Company matter without the written consent of Management. See Article 10 for additional provisions applicable to any such successor or legal representative.

Article 5
Contributions

5.1 Initial Capital Contributions. Each Member (or its predecessors, if any) has made such contributions to the capital of the Company as are reflected in the books and records of the Company.

5.2 Additional Capital Contributions. Except as set forth in this Agreement or as required by the Act, no Member shall be assessed for additional capital contributions.

(a) *By Agreement of Members.* The Members may, by unanimous agreement, at any time or from time to time, make additional capital contributions to the Company.

(b) *By Action of Management.* If Management determines that it is necessary or desirable for the Company to obtain additional funds in the form of additional capital contributions, then:

- (i) Management shall send to each Member a notice (the "First Requirement Notice"), which shall advise Members of the total amount of capital required by the Company (the "Requirement Amount"), the portion of the Requirement Amount to be contributed by each Member (determined according to the Members' Capital Percentages) and the date on which such capital is required to be contributed to the Company (the "Requirement Date"). The Requirement Date shall be not less than five days after the date of the First Requirement Notice.
- (ii) Should any Member not exercise its option and contribute its capital within the period provided in clause (i), Management may (but shall not be obligated to) send to each Member who made contributions pursuant to clause (i) a notice (the "Second Requirement Notice") of the uncontributed portion of the Requirement Amount, each of whom may elect to make a further additional capital contribution to the Company by delivering to Management, within five days of the date of the Second Requirement Notice, written notice of the same, which notice shall include a statement of the maximum amount of the uncontributed Requirement Amount such Member would be willing to contribute. The portion of the uncontributed Requirement Amount that may be contributed by each Member shall be determined by Management ratably according to the relative maximum amounts that the Members propose to contribute in their notices to Management or otherwise as Management shall determine, and shall be paid by the Member to the Company immediately upon demand therefor. No Member, however, shall be required to pay more than its share of the Requirement Amount as set forth in the First Requirement Notice.
- (iii) *Additional capital contributions under this paragraph are voluntary*, but once a Member has agreed to make an additional capital contribution hereunder, the Company shall have all of the rights and remedies at law, in equity and as set forth in this Agreement resulting from the failure of the Member to make such capital contribution.

- (iv) In the event that the entire Requirement Amount is not contributed by all Members in proportion to their Capital Percentages in effect immediately prior to the First Requirement Notice, the Capital Percentages of the Members shall be adjusted with prospective effect to take account of the additional capital contributions made by the contributing Members in relation to the sum of (A) those additional capital contributions and (B) in Management's discretion, either (I) the aggregate amount of the capital contributions (whether or not returned) of the Members immediately prior to the additional capital contributions or (II) the net fair market value of the Company's assets at such time (as determined by Management).

5.3 Defaulting Members. The Company shall be entitled to enforce the obligations of each Member to make the contributions and other payments due to the Company that are provided in this Article and elsewhere in this Agreement, and the Company shall have all remedies available at law or in equity in the event any such contribution or payment is not so made. The Company shall be entitled to recover the reasonable attorney's fees and other costs of enforcing the Members' contribution and payment obligations under this Agreement, and shall also be entitled to recover interest on any unpaid amount, from the due date of such payment to the date of payment at 500 basis points over the Base Rate from time to time in effect.

Article 6 Distributions

6.1 Definitions. The following terms shall have the following meanings:

"Available Cash" shall consist of all cash on hand of the Company irrespective of its source, excluding, however, such reserves for the future debts, expenses, plans and contingencies of the Company as Management may establish.

"Unreturned Capital" of a Member equals the sum of all of such Member's capital contributions to the Company, less the sum of all distributions made to such Member under this Article that are identified (in the distribution provisions of this Article) as distributions of Unreturned Capital. The Unreturned Capital balances of the Members shall, in the discretion of Management, be adjusted to reflect a revaluation of Company property on the books of the Company (i) in connection with the contribution of money or property (other than a de minimis amount) to the Company by a new or existing Member as consideration for an interest in the Company, (ii) in connection with the distribution of money or other property (other than a de minimis amount) by the Company to a terminating or continuing Member as consideration for an interest in the Company, (iii) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company and (iv) on the last day of each fiscal year (but only if substantially all of the Company's property then consists of securities that are readily tradable on an established securities market and such adjustments are consistent with sound industry accounting practices). If a person acquires all or a portion of another Member's interest in the Company, the transferee shall succeed to the corresponding proportion of the transferor Member's Unreturned Capital at the time of the transfer.

6.2 Intentionally Omitted.

6.3 Distributions of Available Cash. Available Cash shall be distributed to the Members at such times as Management shall determine in the following rank and order:

- (a) Among the Members in proportion to, and to the extent of, their Unreturned Capital.

- (b) The remainder, if any, among the Members according to their Capital Percentages.

6.4 Withholding Taxes.

(a) *Withholding Taxes Treated as Distributions.* If the Company is required to pay or withhold any Federal, state, foreign or local taxes levied on all or part of a Member's distributions and/or allocable share of the Company's income, the Company shall have the right to do so and such payment or withholding by the Company shall be treated as a distribution to the Member for whom such payment or withholding is made and shall reduce the amount of the instant and/or future distributions to be paid to such Member.

(b) *Withholding Taxes to be Paid by the Member.* In Management's discretion, the Member for whom any tax payment or withholding would be made shall, within three days after being so notified by the Company, provide the Company with immediately available funds in the amount needed by the Company to satisfy such liability. Any amount so paid to the Company shall not be treated as a capital contribution to the Company. Should a Member fail to timely make any such payment to the Company when due, such Member shall be in breach of its obligations under this Agreement and shall indemnify and hold the Company and the other Members harmless for any costs, penalties, payments or damages incurred by the Company or the other Members as a result of such failure, and such Member shall pay the Company interest in respect of any disbursements made by the Company as a result of such Member failing to timely make payments required by this Section at 400 basis points over the Base Rate from time to time in effect.

(c) *Costs and Expenses.* Any costs and expenses incurred or to be incurred by the Company in connection with making any tax filings (including a share of the cost and expense of any composite filings Management may elect to make) or otherwise in connection with the administration of taxes described in this Section may, in Management's discretion, be added to the amount of taxes treated as distributions under paragraph (a) or to be paid to the Company under paragraph (b).

(d) *Other Taxes.* The preceding paragraphs shall also have application to taxes:

- (i) That are not in the nature of withholding taxes but are assessable against the Company with reference to (or where there is exemption from based upon) the status or nature of a Member.
- (ii) Any tax assessed against or otherwise required to be paid by the Company under the New Audit Procedures (as described in Section 7.8) shall be treated as a withholding or other tax subject to the provisions of this Section, which tax shall be allocated among the Members (including any person that was a Member during any period to which such assessment relates, even if such Member is not a Member at the time the assessment is made or actually paid by the Company) as determined by Management.

(e) *Set-Off.* Section 6.7 shall be applicable to the Members' obligations to the Company under this Section.

6.5 Priorities. Except as may be expressly provided in this Agreement, no Member shall have a priority right over any other Member as to distributions.

6.6 Interest on Capital Contributions. Except as may be expressly provided in this Agreement, no interest shall be allowed to any Member upon the amount of its Unreturned Capital. Any amounts distributed as a preferred return shall not be considered interest.

6.7 Set-Off Rights. The Company shall be entitled to set-off against any distributions or other amounts that may be or become due to a Member from the Company any amounts that may be due from such Member to the Company or another Member.

6.8 Restrictions on Distributions. No distributions may be made to the Members if, after giving effect to such distributions, either the Company would be unable to pay its debts as they become due in the usual course of business or the net assets of the Company would be less than zero.

Article 7 Accounting and Tax Matters

7.1 Books of Account.

(a) *Books of Account.* Management shall cause proper and true books of account to be maintained for the Company wherein there shall be recorded in the Company's books of account the particulars of all monies, goods or effects belonging to or owing to or by the Company, or paid, received, sold or purchased in the course of the Company's activities and all of such other transactions, matters and things relating to the Company as are usually entered in books of account kept by companies engaged in activities of a like kind and character.

(b) *Fiscal Year.* The Company's fiscal year shall be the calendar year unless determined otherwise by Management.

(c) *Method of Accounting.* The Company shall maintain its books of account in conformity with any sound basis of accounting. Without limiting the generality of the foregoing, the term "sound basis of accounting" includes generally accepted accounting principles as well as any "other comprehensive basis of accounting" (as described in Statement on Auditing Standards No. 62 of the American Institute of Certified Public Accountants) such as (i) the income tax basis of accounting, (ii) the cash basis of accounting, (iii) the modified cash basis of accounting and (iv) any statutorily required basis of accounting.

7.2 Tax Reporting. Management shall be responsible for engaging an accountant to prepare and to see to the filing of all Federal, state and local tax returns on behalf of the Company. Management shall provide each Member with such statements as shall be necessary to advise the Members properly about their investment in the Company for income tax reporting purposes. Members acknowledge that the Company may not be able to provide all information required for income tax reporting purposes on a timely basis and that they should expect to extend the time for filing their income tax returns. Each Member does hereby consent to the electronic furnishing of Schedule K-1 information.

7.3 Intentionally Omitted.

7.4 Capital Accounts.

(a) *Capital Account Maintenance Rules.* As part of the Company's books of account, an individual "capital account" shall be maintained for each Member at all times in accordance with Treasury Regulations Section 1.704-1(b). Consistent therewith each Member's capital account shall, inter alia, be increased by: (i) the amount of money contributed by such Member to the Company, (ii) the fair

market value of property contributed by such Member to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Code Section 752) and (iii) allocations to such Member of Company income and gain (or items thereof), including income and gain exempt from tax; and decreased by: (w) the amount of money distributed to such Member (as a Member) by the Company, (x) the fair market value of property distributed to such Member (as a Member) by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752), (y) allocations to such Member of expenditures of the Company described in Code Section 705(a)(2)(B) and (z) allocations to such Member of Company loss and deduction (or items thereof).

(b) *Unitary Capital Account.* A Member who has more than one interest in the Company shall have a single capital account that reflects all such interests, regardless of the class of interests owned by such Member and regardless of the time or manner in which such interests were acquired. In the event any interest in the Company 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, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(I).

(c) *Book-Up and Book-Down Adjustments.* The capital accounts of the Members shall, in the discretion of Management, but only for a substantial non-tax business purpose, be adjusted to reflect a revaluation of Company property on the books of the Company (i) in connection with the contribution of money or property (other than a de minimis amount) to the Company by a new or existing Member as consideration for an interest in the Company, (ii) in connection with the distribution of money or other property (other than a de minimis amount) by the Company to a terminating or continuing Member as consideration for an interest in the Company, (iii) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company and (iv) on the last day of each fiscal year (but only if substantially all of the Company's property then consists of securities that are readily tradable on an established securities market and such adjustments are consistent with sound industry accounting practices).

(d) *Section 704 Adjustments.* The capital accounts of the Members shall be increased or decreased in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect the manner in which the unrealized income, gain, loss or deduction inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the Members if there were a taxable disposition of such property for its fair market value (taking into account for such purposes Code Section 7701(g)) on the date of contribution or distribution or on the last day of each fiscal year, as the case may be. The capital accounts of the Members shall also be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g), as required by Treasury Regulations Sections 1.704-1(b)(2)(iv)(d) and 1.704-1(b)(2)(iv)(f), to the extent applicable, for allocations to them of income, gain, loss or deduction, as computed for book purposes, with respect to Company property.

(e) *Valuation of Assets.* For purposes of any revaluation under paragraphs (c) and (d), the assets of the Company shall be valued at fair market value as determined by Management in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(h).

(f) *Adjustment to Tax Basis.* To the extent an adjustment to the adjusted tax basis of any Company asset is made pursuant to Code Sections 732, 734 or 743, the rules of Treasury Regulations Section 1.704-1(b)(2)(iv)(m) shall be taken into account in determining the Members' capital accounts.

7.5 Financial (Book) Allocations. The net profit or net loss of the Company (and if necessary individual items of gross income or loss), determined on an annual basis in accordance with sound accounting principles, shall be allocated among the Members in a manner that will, so far as

possible, cause the capital account of each Member at the end of each fiscal year to equal the following amount (which may be positive or negative):

(a) The distribution (if any) that such Member would have received had, on the last day of the fiscal year, (i) all Company assets been sold for an amount of cash equal to their book value (determined in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)), (ii) all Company liabilities had been satisfied with cash according to their terms (limited, with respect to each non-recourse liability, to the book value of the assets securing such liability) and (iii) the net proceeds of the sale described in clause (i), after satisfaction of the liabilities described in clause (ii), together with any remaining Company cash, had been distributed among the Members in accordance with Section 6.3, less

(b) The sum of (i) the amount, if any, that such Member is obligated (or deemed obligated) to contribute to the capital of the Company, (ii) such Member's share of partnership minimum gain (determined in accordance with Treasury Regulations Section 1.704-2(g)), and (iii) such Member's share of partner non-recourse debt minimum gain (determined in accordance with Treasury Regulations Section 1.704-2(i)(5)), in each case calculated on the last day of each such fiscal year and without duplication.

In Management's discretion, the net profit or net loss of the Company may be allocated among the Members in accordance with any other reasonable method selected by Management that takes due account of the Members' economic interests in the Company and risk of loss as reflected by their capital contributions, rights to distributions and liability (direct and indirect) for the Company's debts and other obligations.

7.6 Tax Allocations. Except as provided herein, or as otherwise required by the Code or Treasury Regulations promulgated thereunder (including, without limitation, Treasury Regulations Sections 1.704-1 and 1.704-2), Company income, gain, loss, deduction, credit and other partnership items, as computed for Federal income tax purposes, shall be allocated among the Members in the same manner as the corresponding book items are allocated pursuant to Section 7.5.

(a) *Book-Tax Differences*. In accordance with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder, income, gain, loss and deduction with respect to any asset contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its fair market value at the time of contribution to the Company. Management shall have the discretion to select the method of allocating such book-tax differences from among those described in Treasury Regulations Section 1.704-3.

(b) *Qualified Income Offset*. No allocation of loss or deduction shall be made to a Member to the extent such allocation causes or increases a deficit in such member's capital account balance at the end of the fiscal year to which such allocation relates. In determining whether any Member has a deficit capital account for purposes of the foregoing limitation, the Members' capital accounts shall be reduced for:

- (i) Adjustments that, as of the end of the fiscal year, reasonably are expected to be made to the Members' capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(k) for depletion allowances with respect to oil and gas properties of the Company, if any.
- (ii) Allocations of loss and deduction that, as of the end of the fiscal year, reasonably are expected to be made to the Members pursuant to Code Sections 704(e)(2) and 706(d) and Treasury Regulations Section 1.751-1(b)(2)(ii).

- (iii) Distributions that, as of the end of the fiscal year, reasonably are expected to be made to the Members to the extent they exceed offsetting increases to the Members' capital accounts that reasonably are expected to occur during (or prior to) the fiscal year in which such distribution is reasonably expected to be made under Treasury Regulations Section 1.704-2(f). For purposes of determining the amount of expected distributions and expected capital account increases, the rules set out in Treasury Regulations Section 1.704-1(b)(2)(iii)(c) shall apply.

A Member who unexpectedly receives an adjustment, allocation or distribution described in the preceding clauses shall be allocated items of income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such fiscal year) in an amount and manner sufficient to eliminate such deficit balance as quickly as possible. This paragraph is intended to and in all events shall be interpreted and applied so as to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

(c) *Non-Recourse Deductions.* Non-recourse deductions (as defined in Treasury Regulations Section 1.704-2(b)(1)) shall be allocated in accordance with the Members' Capital Percentages, pursuant to Treasury Regulations Section 1.704-2(e)(2). Non-recourse deductions attributable to Member non-recourse debt (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member or Members that bear the economic risk of loss for such debt in accordance with Treasury Regulations Section 1.704-2(i)(1).

(d) *Company Minimum Gain.* If there is a net decrease in "Company minimum gain" (*i.e.*, partnership minimum gain, as defined in Treasury Regulations Section 1.704-2(d)) during a fiscal year, each Member with a share of Company minimum gain as of the beginning of the fiscal year shall be allocated items of Company income and gain for such fiscal year (and, as necessary, for subsequent years) equal to that Member's share of the net decrease in Company minimum gain. This paragraph is intended to and shall in all events be interpreted and applied so as to constitute a "minimum gain chargeback" within the meaning of Treasury Regulations Section 1.704-2(f).

(e) *Member Non-Recourse Debt Minimum Gain.* If there is a net decrease in "Member non-recourse debt minimum gain" (*i.e.*, partner non-recourse debt minimum gain, as defined in Treasury Regulations Section 1.704-2(i)(3)) during a fiscal year, each Member with a share of Member non-recourse debt minimum gain as of the beginning of the fiscal year shall be allocated items of Company income and gain for such fiscal year (and, as necessary, for subsequent years) equal to that Member's share of the net decrease in Member non-recourse debt minimum gain. This paragraph is intended to and shall in all events be interpreted and applied so as to constitute a Member "non-recourse debt minimum gain chargeback" within the meaning of Treasury Regulations Section 1.704-2(i)(4).

(f) *Member Share of Liabilities.* A Member's share of the liabilities of the Company shall be determined under Code Section 752 and the Treasury Regulations promulgated thereunder. For purposes of allocating excess non-recourse liabilities under Treasury Regulations Section 1.752-3, the Members' "interests in . . . profits" shall generally be the manner in which the Members share the profits of the Company. In the discretion of Management, excess non-recourse liabilities may be allocated among the Members in accordance with the manner in which it is reasonably expected that the deductions attributable to those non-recourse liabilities will be allocated.

(g) *Curative Allocations.* The Company shall take into account any special allocations of items of income, gain, loss, or deduction pursuant to this Section in computing subsequent allocations pursuant to the other provisions of this Section so that the net amount of any items so allocated and all other items allocated to each Member pursuant to this Section shall, to the extent possible, be equal to the

net amount that would have been allocated to each Member pursuant to this Section if the special allocations in this Section had not been made and so that duplicative allocations are avoided. In making allocations among the Members of any Company gain, the ordinary income portion, if any, of such gain caused by the recapture of cost recovery or other deductions shall be allocated among those Members who (or whose predecessors) were previously allocated the cost recovery or other deductions in proportion to the amount of such deductions previously allocated to them. It is intended that the Members shall bear the burden of recapture caused by cost recovery or other deductions that were previously allocated to them or their predecessors in proportion to the amount of such cost recovery or other deductions that were allocated to them, notwithstanding that the Members' Capital Percentages may increase or decrease from time to time. Nothing in this paragraph, however, shall cause the Members to be allocated more or less gain than would otherwise be allocated to them pursuant to this Section.

(h) *Compliance with Code.* The allocations contained in this Section are intended to allocate Company tax items in accordance with the Members' economic interests in the Company while complying with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If in the view of the Company's tax advisors the allocation of tax items pursuant to the provisions of this Section do not (i) satisfy the requirements of Code Section 704(b) or the Treasury Regulations promulgated thereunder, (ii) comply with any other provision of the Code or Treasury Regulations or (iii) properly take into account any expenditure made by the Company or transfers of Company interests, then, notwithstanding anything to the contrary contained in this Section, tax items shall be allocated in such manner as Management determines so as to reflect properly the foregoing provisions (i) through (iii), and Management shall thereupon have the right to amend this Agreement without action by the Members to reflect any such change in the method of allocating Company tax items. provided, however, that any change in the method of allocating tax items shall not alter the economic agreement among the Members.

(i) *Changes in Interests.* In the event of any changes in a Member's interest in the Company during a fiscal year, allocations of tax items among the Members for such fiscal year shall take due account of the requirements of Code Section 706(d) and Management shall have the right to select any method of determining the varying interests of the Members during such fiscal year which satisfies Code Section 706(d).

7.7 Tax Elections. Management shall have the right to make (and revoke) any and all tax elections for the Company, including, without limitation, an election to adjust the tax basis of Company assets under Code Section 754.

7.8 Administration of Tax Proceedings.

(a) *Partnership Representative.* Management shall appoint, remove and replace the Company's partnership representative (referred to herein as the "Partnership Representative"). Upon the resignation or removal of the Partnership Representative, a successor Partnership Representative shall be selected by Management.

(i) In accordance with Code Section 6221 et seq. as in effect for tax years referred to above (the "New Audit Procedures"), the Partnership Representative shall represent the Company in any tax dispute, controversy, audit or other administrative proceeding with the Internal Revenue Service and in any judicial proceeding regarding the same. The Partnership Representative shall be entitled to take such actions on behalf of the Company in any and all such administrative or judicial proceedings as it reasonably determines to be appropriate.

- (ii) The Partnership Representative shall be entitled to make any and all elections under the New Audit Procedures, including without limitation an election out of the New Audit Procedures under Code Section 6221(b) or to an election to “push out” to the Company’s Members and former Members any “partnership adjustment” under Code Section 6226.
- (iii) The Partnership Representative shall employ experienced tax counsel to assist the Partnership Representative. Notwithstanding the foregoing, it shall be the responsibility of each Member, at its expense, to employ tax counsel to represent its separate interests to the extent not inconsistent with the New Audit Procedures.
- (iv) The Partnership Representative shall keep the Members informed of all administrative and judicial proceedings with the Internal Revenue Service and shall furnish to each Member who so requests in writing a copy of each notice or other communication received by the Partnership Representative from the Internal Revenue Service, except such notices or communications as are sent directly to such Member by the Internal Revenue Service.
- (v) The Company shall not be obligated to pay any fees or other compensation to the Partnership Representative in its capacity as such. provided, however, that all reasonable expenses incurred by the Partnership Representative in serving as the Partnership Representative shall be Company expenses and the Partnership Representative shall be reimbursed by the Company in connection therewith. If the Partnership Representative is required by law or regulation to incur fees and expenses in connection with tax matters not affecting each of the Members, then the Partnership Representative may, in its sole discretion, obtain reimbursement from those Members on whose behalf such fees and expenses were incurred.
- (vi) The Members agree to cooperate in good faith to timely provide information reasonably requested by the Partnership Representative as needed to comply with the Partnership Representative’s responsibilities under the Code (and to provide notice to the Partnership Representative of any change in such information), including information that will enable the Company to make (and take full advantage of) any elections available to the Company under the New Audit Procedures.
- (vii) The Company shall make any payments of assessed amounts under Code Section 6221 and shall allocate any such assessment among the current or former Members of the Company for the “reviewed year” to which the assessment relates in a manner that reflects the current or former Members’ respective interests in the Company for that reviewed year based on such Member’s share of such assessment as would have occurred if the Company had amended the tax returns for such reviewed year and such Member incurred the assessment directly (using the tax rates applicable to the Company under Code Section 6225(b)).
- (viii) To the extent that the Company is assessed amounts under Code Section 6221(a) and an election under Code Section 6226 has not been made with respect to such amounts, the current or former Member(s) to which this assessment relates shall pay to the Company such Member’s share of the assessed amounts, including such Member’s share of any additional accrued interest assessed against the

Company relating to such Member's share of the assessment, upon 20 days of written notice from the Partnership Representative requesting the payment. With respect to current Members, the Company may (in Management's discretion) allow some or all of a Member's obligation pursuant to the preceding sentence to be applied to and reduce the next distribution(s) otherwise payable to such Member under this Agreement, provided that such application to and reduction of the distributions shall apply to all current Members, pro rata and pari passu, based on the Members' shares of the assessment.

- (A) Unless waived by Management in its sole discretion, the transferee or successor of a Member shall be responsible (jointly and severally with the transferor or predecessor) for any liability that the transferor Member might have for taxes assessable against the former Member under this clause.
- (B) The provisions contained in this clause shall survive the dissolution of the Company, the redemption or withdrawal of any Member or the transfer of any Member's interest in the Company.
- (C) The provisions contained in this clause shall take precedence over any inconsistent provisions of this Agreement.

(b) *Right to Indemnification.* The Partnership Representative shall be entitled to be indemnified by the Company in accordance with Section 8.8.

7.9 Federal Taxpayer Identification Number. Management hereby authorizes any attorney or employee at Levenfeld Pearlstein, LLC to (a) apply for a Federal taxpayer identification number for the Company, and to execute in connection therewith Internal Revenue Service Form SS-4 as an authorized signatory for and on behalf of the Company or any of its Members, members of Management or responsible parties (as defined in the Internal Revenue Service instructions for completing Form SS-4), (b) receive the Federal taxpayer identification number on behalf of the Company and (c) answer any questions from the Internal Revenue Service related thereto on behalf of the Company.

Article 8 Management of the Company

8.1 Management by Managers. The affairs of the Company shall be managed and controlled by Management in accordance with this Agreement generally and this Article in particular.

- (a) *Number.* Management will be comprised of one Manager.
- (b) *Current Manager.* The Manager acting as of the date of this Agreement is identified on the first page of this Agreement.

8.2 Authority of Management.

(a) *Exclusive Right to Manage.* Except as otherwise provided herein, Management shall have the sole and exclusive right and authority to operate, manage, conduct and control the affairs of the Company. Management shall make all decisions affecting the affairs of the Company and shall carry out the purposes of the Company as Management deems proper, convenient or advisable.

(b) *Power and Authority.* Without limiting the generality of the foregoing, and consistent with the purposes of the Company, Management shall have all of the rights, powers and authority under the Act and otherwise as provided by law, including the right, power and authority to acquire assets. purchase goods and services. sell, exchange, lease, license or otherwise deal in or with any and all assets of the Company. enter into partnerships and joint ventures. merge or consolidate the Company into or with one or more other companies. act as the manager, managing member or general partner of another entity. open and maintain one or more bank accounts and designate (and change the designation of) signatories thereon. borrow funds to finance the Company's activities and in connection with such borrowing, mortgage, hypothecate, pledge, lien or otherwise encumber the revenues and assets of the Company. guaranty the debts of affiliates and others when Management believes it will benefit the Company to do so. confess, settle, compromise or otherwise satisfy debts, claims, judgments and other obligations, including by way of a deed in lieu of foreclosure or similar transaction. enter into any contract or agreement or amend or cancel the same. and invest and reinvest any funds or other assets of the Company – all as incident to or necessary for the operations of the Company. Without limitation of the foregoing, Management has the right, power and authority to sell, exchange or otherwise dispose of all or substantially all of the Company's assets, irrespective of whether such a transaction is not in the ordinary course of the Company's business.

(c) *Exercise of Discretion.* When taking any action or making any decision on behalf of the Company, each member of Management shall perform its duties in good faith and in a manner that it reasonably believes to be in the best interests of the Company and its Members, and with such care as an ordinarily prudent person in a like position would exercise under similar circumstances. Notwithstanding anything provided in this Agreement (or other provisions of law or equity) to the contrary, whenever Management is permitted or required to make decisions, Management shall be fully entitled to consider its own interests (or those of any affiliate), including without limitation by reason of any guaranties that Management or its affiliates may have given in respect of any loan to the Company or any subsidiary.

8.3 Management's Time Commitment. Management shall cause so much time to be devoted to the business of the Company as, in its judgment, the conduct of the Company's business shall reasonably require.

8.4 Reimbursement of Management. The Company shall reimburse Management for any costs that may be properly expended on behalf of the Company made out of funds other than those of the Company.

8.5 Fees. Management shall be entitled to a \$2,500 per annum fee for its services as Manager hereunder, which may be deferred until the sale of the Property. Management shall be entitled to be reimbursed for its reasonable out-of-pocket expenses hereunder. Such fees shall be in addition to the distributions (if any) to which Management is entitled under this Agreement and any fees due to the Manager or its affiliates under any asset management agreement.

8.6 Related Business Partners. Management may employ, contract for services with, acquire or sell goods, property and materials from or to, borrow money from and otherwise deal with any Member, any member of Management or any affiliate of the foregoing on any basis which is customary and competitive, or otherwise fair and reasonable. The Company shall recognize SE 13200 PIONEER (EDEN PRAIRIE) AM, LLC as the asset manager ("Asset Manager") of the Company on the same basis as the Asset Manager acted for the Trust, and the Company shall assume the past and prospective obligations of the Trust to the Asset Manager under the asset management agreement between the Asset Manager and the Trust.

8.7 Liability of Management.

(a) *Company Liabilities.* The debts, obligations and liabilities of the Company, whether arising at common law, in contract, tort, or otherwise, are solely the debts, obligations and liabilities of the Company, and are not the debts, obligations and liabilities of Management (or any officers, directors, shareholders, partners, members, managers, employees, trustees, agents and other representatives of a member of Management).

(b) *Exculpation.* Management shall not be liable to a Member or the Company for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Company, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Company, but only if such employee, broker or agent was selected, engaged or retained and supervised with reasonable care. Management may consult with counsel and accountants in respect of Company affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants if, and only if, they shall have been selected with reasonable care. The Members shall look solely to the assets of the Company for the return of their capital and, if the assets of the Company remaining after payment or discharge of the debts and liabilities of the Company are insufficient to return such capital, they shall have no recourse against Management for such purpose. Notwithstanding any of the foregoing to the contrary, the provisions of this Section shall not be construed to relieve (or attempt to relieve) any person of any liability by reason of gross negligence, recklessness or intentional wrongdoing or to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the provisions of this Section to the fullest extent permitted by law. This Section shall also apply to the officers, directors, shareholders, partners, members, managers, employees, trustees, agents and other representatives of any entity that is a member of Management.

8.8 Indemnification. The Company shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the Company), whether civil, criminal, administrative or investigative, by reason of the fact that the person (each an “indemnitee”) is or was a member, manager, officer, employee, agent or other representative of the Company, or is or was serving at the request of the Company as a director, manager, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney’s fees and costs), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Company or, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in, or not opposed to, the best interests of the Company or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that the person’s conduct was unlawful. Without limitation of the generality of this Section, this Section is also intended to benefit (a) the Company’s organizer, (b) the Members, (c) each member of Management, (d) the Company’s Partnership Representative, (e) any authorized signatories and officers of the Company appointed by Management and (f) the officers, directors, shareholders, partners, members, managers, employees, trustees, agents and other representatives of any indemnitee that is an entity. Except as otherwise expressly provided herein, all of the indemnity provisions contained in this Agreement shall survive an indemnitee’s no longer being affiliated with the Company (by way of illustration only, a former Member shall not fail to be eligible for indemnification solely because it is no longer a member of the Company). Without limitation of the foregoing:

(a) *Indemnification for Actions by or in the Right of the Company.* The Company shall also indemnify every person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit, by or in the right of the Company to procure a judgment in its favor by reason of the fact that the person is or was a member, manager, officer, employee, agent or other representative of the Company, or is or was serving at the request of the Company as a director, manager, officer, employee, trustee, agent or other representative of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees and costs) actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the Company, but no indemnification shall be made in respect of any claim, issue or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the Company, unless, and only to the extent that, the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for those expenses as the court shall deem proper.

(b) *Expenses.* To the extent that a member, manager, officer, employee, agent or other representative of the Company has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in this Section or in defense of any claim, issue or matter therein, the person shall be indemnified against expenses (including attorney's fees and costs) actually and reasonably incurred by the person in connection therewith.

(c) *Determination.* Any indemnification under this Section (unless ordered by a court), shall be made by the Company only as authorized in the specific case, upon a determination that indemnification of the director, officer, manager, employee or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in this Section. The determination shall be made (i) by Management, excluding any member of Management who is a party to the action, suit or proceeding, (ii) by legal counsel in a written opinion or (iii) by Members holding a majority of the Capital Percentages.

(d) *Payment in Advance.* Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Company in advance of the final disposition of the action, suit or proceeding, as authorized by Management or Members in the specific case, as provided in the preceding paragraph, upon receipt of an undertaking by or on behalf of the person to be indemnified to repay that amount, unless it shall ultimately be determined that the person is entitled to be indemnified by the Company as authorized in this Section.

(e) *Indemnification Not Exclusive.* The indemnification provided by this Section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Company's Charter, or any agreement, vote of members or disinterested managers, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, manager, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

(f) *Insurance.* The Company may purchase and maintain insurance on behalf of any person who is or was a manager, officer, employee or agent of the Company, or who is or was serving at the request of the Company as a director, officer, manager, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in any capacity, or arising out of the person's status as such, whether or not the Company would have the power to indemnify the person against the liability under the provisions of this Section.

(g) *Report to Members.* If the Company has paid indemnity or has advanced expenses to a manager, officer, director, employee or agent, the Company shall promptly report the indemnification or advance in writing to the Members.

(h) *Definitions.* For purposes of this Section, references to “other enterprises” shall include employee benefit plans. references to “finances” shall include any excise taxes assessed on a person with respect to an employee benefit plan. and references to “serving at the request of the Company” shall include any service as a manager, officer, employee, agent or other representative of the Company that imposes duties on, or involves services by Management, or any employee or agent with respect to an employee benefit plan, its participants or beneficiaries. A person who acted in good faith and in a manner the person reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Section.

8.9 Authorized Signatories and Officers of the Company. Management may from time to time appoint one or more persons to act as authorized signatories to execute agreements, contracts, documents (including promissory notes, mortgages, security agreements and other loan documents) and other instruments (including deeds) on behalf of the Company. Management may also from time to time appoint one or more persons to serve as officers of the Company, in such capacities and with such delegated rights and powers as Management may delegate. No such authorized signatory or officer shall have any different or greater rights and powers than Management has under this Agreement. Authorized signatories and officers shall be subject to removal by Management at any time and for any reason. Authorized signatories and officers appointed by Management shall be entitled to be indemnified by the Company in accordance with Section 8.8.

Article 9 Membership in the Company

9.1 Rights and Obligations of the Members. Unless a Member is a member of Management, and except as expressly provided in this Agreement to the contrary, no Member shall take part in the control or management of the Company, nor shall any Member have any authority to act for or on behalf of the Company or to sign for or bind the Company. Unless admitted to the Company as a Member in accordance with Article 10, no person who is not a signatory to this Agreement shall be considered a Member. The Company and Management need deal only with persons as Members that are so admitted and shall not be required to deal with any other person (other than with respect to distributions to assignees pursuant to assignments in compliance with Article 10) merely because of an assignment or transfer of an interest to such person or by reason of the incapacity of a Member. Any distribution made in accordance with this Agreement by the Company to the person shown on the Company records as a Member or to its legal representatives, or to the assignee of the right to receive Company distributions as provided herein, shall acquit the Company and Management with respect to such distribution of all liability to any other person that may have an interest in or claim to such distribution by reason of any other assignment by the Member with respect to such distribution or by reason of such Member’s incapacity, or for any other reason.

9.2 Liability. The debts, obligations and liabilities of the Company, whether arising at common law, in contract, tort, or otherwise, are solely the debts, obligations and liabilities of the Company, and are not the debts, obligations and liabilities of any Member (or any officers, directors, shareholders, partners, members, managers, employees, trustees, agents and other representatives of a Member). Except as may be expressly provided elsewhere in this Agreement or required by the Act, no Member shall be personally liable for any of the debts, obligations and liabilities of the Company beyond the amount contributed or required to be contributed by it to the Company under this Agreement. If a

Member has a deficit in its capital account, such Member shall not be obligated to contribute any amount of that deficit to the Company. any such deficit shall not be considered an asset of the Company.

9.3 Expenditures of Members. In the discretion of Management, the Company may reimburse the Members for any ordinary course costs or expenses that may be properly expended by them on behalf of the Company made out of funds other than those of the Company.

9.4 Waivers. No Member shall have the right to partition any property of the Company during the term of this Agreement, or while such assets are held in trust pursuant to Section 18.4, nor shall any Member make application to any court of authority having jurisdiction in the matter or commence or prosecute any action or proceeding for such partition and the sale thereof, and upon any breach of the provisions of this Section by any Member, the other Members, in addition to all of the rights and remedies in law and in equity that they may have, shall be entitled to a decree or order restraining and enjoining such application, action or proceeding.

9.5 Withdrawals and Resignations. No Member shall be entitled to withdraw, resign or otherwise voluntarily dissociate from the Company, except pursuant to the terms of this Agreement. No Member shall be entitled to receive any money or property from the Company except (a) by way of distributions as provided pursuant to Article 6, (b) by way of distributions upon the winding-up of the Company pursuant to Article 18, (c) in respect of any loans to the Company then due and owing to such Member and (d) as expressly provided elsewhere in this Agreement.

9.6 Nature of Interest. A Member's interest in the Company shall be personal property for all purposes.

9.7 Uncertificated Securities. Unless Management decides otherwise, the interests of the Members in the Company shall not be certificated.

9.8 Trustee Liability.

(a) *Actions as Trustees.* When this Agreement is executed by the trustee of any trust, such execution is by the trustee, not individually, but solely as trustee in the exercise and under the power of authority conferred upon and vested in such trustee, and nothing herein contained shall be construed as creating any liability on the part of any such trustee personally to pay any amounts required to be paid hereunder, or to perform any covenant, either express or implied, contained herein, all such liability, if any, being expressly waived by the parties hereto by their execution hereof. Any liability of any Member which is a trust to the Company or to any third person shall be only that of such trust to the full extent of its trust estate and shall not be a personal liability of any trustee, grantor or beneficiary thereof.

(b) *Successor Trustee.* Any successor trustee or trustees of any trust which is a Member herein shall be entitled to exercise the same rights and privileges and be subject to the same duties and obligations as its predecessor trustee. As used in this Agreement, the term "trustee" shall include any or all such successor trustees.

(c) *Termination of Trust.* The termination of any trust which is a Member shall not terminate the Company. Upon the allocation or distribution of all or any portion of the Company interest of a trust which is a Member pursuant to the exercise of any power of appointment, or otherwise, to a beneficiary of such trust or to another person or persons or to another trust or trusts, whether or not such distribution shall terminate such distributing trust, each such distributee shall be entitled to be admitted to the Company as a Member to the extent of the proportionate share of the Company interest distributed to it,

subject to the terms of this Agreement, including, without limitation, the restrictions contained in Article 10.

Article 10
Transfers and Rights Offerings

10.1 Transfers by Members.

(a) *Direct Transfers.* Without the prior written consent of Management, no Member shall sell, exchange, pledge, mortgage, hypothecate, encumber or otherwise transfer (any of the foregoing being a “transfer” for purposes of this Section) its interest in the Company. Any such transfer shall be void from inception and be of no force or effect whatsoever.

(b) *Indirect Transfers.* Without the prior written consent of Management, no Member that is an entity shall suffer or permit a transfer of an interest in such Member (or an interest in any entity that is a direct or indirect beneficial owner of such Member). Any such transfer shall be void from inception and be of no force or effect whatsoever.

(c) *Permitted Transferees.* Management shall not unreasonably withhold its consent to a direct or indirect transfer of all or any part of a transferor’s interest in an entity that is a Member that is otherwise prohibited by this Section to a Permitted Transferee (as defined below):

- (i) In the case of a transferor who is an individual, a “Permitted Transferee” is (A) such transferor’s spouse, (B) a lineal descendant or ancestor of such transferor or a spouse of any of the foregoing, (C) a trust established for the benefit of the transferor or any person described in clauses (A) or (B) or (D) any entity wholly-owned and controlled by the transferor and/or any one or more of the persons described in clauses (A), (B) or (C).
- (ii) In the case of a transferor that is a trust, a “Permitted Transferee” is (A) any individual beneficiary of such trust or (B) a Permitted Transferee of such individual beneficiary.
- (iii) In the case of a transferor that is an entity (other than a trust), a “Permitted Transferee” is any affiliate of such transferor. As used in this clause, an “affiliate” of the transferor is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the transferor and “control” means possessing more than 50 percent of the capital, profits *and* voting rights of an entity.

(d) *Restrictions on Transfers to Permitted Transferees.* Notwithstanding anything to the contrary in this Section, Management may withhold its consent to a transfer of an interest in the Company (or of any interest in an entity (including a trust) that is a direct or indirect beneficial owner of the Company) if such transfer would (i) result in the Company being classified as other than a partnership for income tax purposes, (ii) result in the termination, liquidation or dissolution of the Company for any tax or non-tax purposes, (iii) result in the Company not qualifying for an exemption from the registration requirements of any applicable Federal or state securities laws, (iv) result in any violation of any applicable Federal, state or local laws, including securities laws, (v) result in the Company having to register as an investment company under the Investment Company Act of 1940, as amended, (vi) require the Company or the Manager to register as an investment adviser under the Investment Advisers Act of 1940, as amended, (vii) result in a “prohibited transaction” under the Employee Retirement Income

Security Act of 1974, as amended, and the regulations promulgated thereunder, (viii) result in any assets of the Company becoming “plan assets” within the meaning of U.S. Department of Labor Regulation Section 2510.3-101, as modified by Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended, (ix) result in a breach of this Agreement or a default under any material contract or agreement to which the Company is a party, (x) result in a breach or default of any term, condition or obligation contained in any document evidencing or securing a loan secured by any of the assets of the Company, (xi) be to a person who is unable to make any of the representations contained in Article 15 or any subscription for interests in the Company, (xii) be to a person whose financial wherewithal is not known to Management to be equal to or greater than the financial wherewithal of the transferor, (xiii) be to a person who would be a “bad actor” within the meaning of Rule 506 of Regulation D under the Securities Act of 1933, as amended, (xiv) would result in the Company being unable to make (or losing the benefit of) any tax election, or (xv) otherwise adversely affect the business, affairs or reputation of the Company (including resulting in any failure of the Company to qualify (or losing) any governmental or other license, permit, contract, concession or benefit). When the term “Company” is used in this paragraph it shall be understood to mean the Company or any of its affiliates.

10.2 Transfers by Management. Management is an agent of the Company and its interest in managing the affairs of the Company is not susceptible of being and may not be sold, exchanged, pledged, mortgaged, hypothecated or otherwise transferred or encumbered. Insofar as a member of Management is a Member or is otherwise entitled to distributions under Article 6, Section 10.1 shall govern the transfer of such member of Management’s right to distributions and other economic interests in the Company.

10.3 Rights Offerings.

(a) *Additional Membership Interests.* The Company may issue additional membership interests in the Company (including so-called promote or carried interests), or options, warrants or other rights to acquire membership interests in the Company, to new or existing Members on such terms as Management may determine is fair and reasonable, including, without limitation, pursuant to plans or programs for employees and contractors of and other persons affiliated with the Company. Management may do so without the necessity of calling for additional capital contributions from existing Members.

(b) *Adjustment of Existing Membership Interests.* Upon the issuance of additional membership interests to new or existing Members, Management is authorized to adjust the Capital Percentages, Unreturned Capital balances, capital account balances and other attributes of the membership interests of the existing Members to take fair account of the additional membership interests issued by the Company.

(c) *Certificates of Designation.* Certificates of designation or other instruments may be issued by the Company describing the rights, entitlements and obligations of the additional membership interests issued by the Company. Such certificates of designation or other instruments shall not require Member approval notwithstanding that the same may affect the rights, entitlements and obligations of existing Members or otherwise appear to require Member approval pursuant to Section 17.1. Except as otherwise provided in such certificates of designation or other instruments, holders of additional membership interests shall be entitled to all of the rights and privileges of the original Members hereunder and shall be subject to all of the obligations and restrictions hereunder, and in all other respects their admission shall be subject to all of the terms and provisions of this Agreement.

(d) *Preemptive Rights.* Existing Members shall not have any preemptive rights to acquire any additional membership interests in the Company (or any options, warrants or other rights to acquire

membership interests in the Company) that may be issued to other existing Members or new Members pursuant to this Section.

10.4 General Provisions. The following rules shall apply to transfers of Company interests and the admission of additional persons to the Company:

(a) *Procedure for Admission*. No person shall be admitted as a transferee or additional Member hereunder unless and until (i) in the case of a transfer of an interest, the transfer is made in writing, signed by the transferor and accepted in writing by the transferee, and a duplicate original of the instrument of transfer is delivered to and accepted by Management and (ii) the prospective admittee executes and delivers to the Company a written agreement, in form and substance satisfactory to Management, pursuant to which the admittee agrees to be bound by this Agreement.

(b) *Binding Effect*. Any person acquiring or claiming an interest in the Company, in any manner whatsoever, shall be subject to and bound by all terms, conditions and obligations of this Agreement to which its predecessor in interest, if any, was subject or bound, without regard to whether such person has executed a counterpart hereof or any other document contemplated hereby. No person, including the legal representatives, heirs or legatees of a deceased Member, shall have any rights or obligations greater than those set forth herein and no person shall acquire an interest in the Company or become a Member except as permitted hereby.

(c) *Actions Prior to Acceptance of Assignment*. Notwithstanding that a person acquiring or claiming an interest in the Company is bound by all terms, conditions and obligations of this Agreement to which its predecessor in interest, if any, was subject or bound, the Company and Management shall be entitled to treat the transferor of the transferred interest as the absolute owner thereof in all respects and shall incur no liability for distributions made in good faith to such transferor prior to such time as the documents specified in this Section have been delivered to and accepted by Management. Any person to whom an interest in the Company is attempted to be transferred in violation of this Article or any other provision of this Agreement shall not have any of the rights of a Member of the Company otherwise provided under this Agreement or the Act, including, but not limited to, the right (i) to receive distributions from the Company, (ii) to vote on any matter, (iii) to participate in the management of the Company, (iv) to act as an agent of the Company, (v) to obtain any information or accounting of the affairs of the Company or (vi) to inspect the books or records of the Company. If, however, by law, the Company is required to recognize the purported transfer of a Member's interest in the Company, the purported transferee's rights shall be strictly an economic interest in the Company limited solely to distributions (and accompanying allocations of accounting and tax items) as provided by this Agreement with respect to such economic interest, and the Member whose interest in the Company has purportedly been transferred shall have no right to any distributions with respect to such interest in the Company. Any distributions to such purported transferee may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations or liabilities that the transferor or transferee may have to the Company (including for damages). A Member attempting to engage in any purported transfer that has not been approved in writing by Management and such Member's purported transferee shall be jointly and severally liable for any and all costs, liabilities and damages that the Company or another Member may suffer or incur (including, but not limited to, incremental tax liability and attorney's fees and expenses) as a result of such purported transfer. For purposes of this paragraph, an economic interest in the Company shall mean a person's rights to distributions (and accompanying accounting and tax allocations), but excluding the right to vote, approve or disapprove, or otherwise to participate in, the management and control of the affairs of the Company.

(d) *Consent of Members.* Each Member hereby consents to the substitution of any transferee of a Member's interest or the admission of any additional person as a Member as approved by Management.

(e) *Costs.* In the discretion of Management, the costs incurred by the Company in processing a transfer (including attorney's fees and costs) shall be borne jointly and severally by the transferor and the transferee, and shall be payable prior to and as a condition of admission to the Company.

10.5 Bring-Along Rights. In the event that Management proposes to enter into one or more agreements to sell to any person or persons (referred to herein collectively as the "purchaser") all or substantially all of the membership interests in the Company in a single transaction or related series of transactions in lieu of a sale of all or a substantial part of the assets of the Company, all of the Members hereby agree to sell their respective interests in the Company to the purchaser on the terms set forth in such agreements. The agreements shall provide for the payment to the Members for their interests in the Company amounts equal to the amounts that they would have received had the Company (a) sold all of its assets at the price implicit in the price to be paid by the purchaser for the membership interests in the Company, (b) satisfied all of its obligations and (c) made liquidating distributions to the Members in accordance with Article 18. The costs associated with the sale shall, in general, be borne by the Members in the same proportion as they share the considerations received in accordance with the preceding sentence. Management may reallocate among the Members so much of the considerations that a Member would be entitled to receive as equals the amounts which such Member then owes to the Company or to another Member. Management is hereby granted by each Member a power of attorney, coupled with an interest, to execute in the name of the Member any and all agreements, contracts, documents and other instruments (including instruments of assignment) that Management deems necessary or useful in order to consummate these transactions. These instruments shall be deemed to have been executed on behalf of the Members as if signed by the Members themselves.

Article 11 Loan Guaranties

11.1 Right of Reimbursement. In the event any Member guarantees any indebtedness or other obligation of the Company, then the Company shall promptly reimburse the guarantor for any and all payments made by the guarantor for such indebtedness or other obligation. This Section shall also apply:

(a) To any person who holds an interest in the Company, whether or not such person is a Member.

(b) To any guaranty of any indebtedness or other obligation of the Company given by any affiliate of a Member, any member of Management (whether or not a Member) and any affiliate of a member of Management.

(c) To any guaranty of any indebtedness or other obligation of another entity owned by the Company in whole or in part.

This Section shall not have application to (and there shall be no right of reimbursement in respect of) (i) any guaranty given without the consent of Management or (ii) any obligation under a guaranty that arises by reason of the fraud, gross negligence, willful misconduct or breach of this Agreement by the guarantor or its affiliate (including its affiliate Member).

Article 12
Redemption of Membership Interests

12.1 Redemption of Interests.

(a) *Membership Interests Subject to Redemption.* The interests of any Member in the Company (which for purposes of this Section shall include any other person possessing an economic interest in the Company) shall be subject to redemption (i.e., purchase by the Company) as provided in this Section.

(b) *Election to Redeem Made by Management.* The decision to redeem a Member's interest in the Company in accordance with this Section shall be made by Management in its sole discretion and for any reason, including, without limitation, for Cause or for Good Reason (as defined below):

- (i) As used in this Section, "Cause" means:
 - (A) A breach by the Member of any of the terms, conditions or obligations of the Member contained in this Agreement, including, without limitation, transferring or obtaining (voluntarily, by operation of law or otherwise) an interest in the Company without Management's written consent.
 - (B) Fraud, dishonesty or willful and serious misconduct by the Member with respect to the business or affairs of the Company.
 - (C) Any misrepresentation by a Member in any subscription for interests in the Company (including any representation made in this Agreement).
 - (D) Interference with the orderly conduct of the Company's affairs.
- (ii) As used in this Section, "Good Reason" means:
 - (A) Fraud, dishonesty or serious misconduct by the Member, other than with respect to the business or affairs of the Company, which involves an act of moral turpitude or could adversely affect the business, affairs or reputation of the Company.
 - (B) The Member's continued ownership of an interest in the Company could interfere with the ownership or operation of any material Company asset or activity, including, without limitation, rendering the Company ineligible for any license, permit, registration, status, concession or benefit.
 - (C) The Member becoming a disreputable person.
 - (D) The Member becoming a "bad actor" within the meaning of Rule 506 of Regulation D under the Securities Act of 1933, as amended.
 - (E) The death of a Member.

- (iii) The redemption of a Member for Cause shall not be considered a remedy for breach and shall not limit or in any way diminish any right or remedy the Company may have on account of an act constituting Cause.
- (iv) The interests of all transferees, successors or assignees of a Member (including a Permitted Transferee) shall also be subject to redemption under this Section if any transferee, successor or assignee has engaged in any of the acts described in clauses (i) or (ii), or if the assigning or another predecessor Member of the Permitted Transferee (whether or not a Member) engaged in any of the acts described in such clauses.

(c) *Redemption Notice.* If Management decides to redeem a Member in accordance with this Section, Management shall send such Member (the "Redeemed Member") written notice (the "Redemption Notice") of its decision. The Redemption Notice shall specify the date on which the redemption shall close (the "Redemption Closing Date"). the Redemption Closing Date shall be established in accordance with paragraph (f).

(d) *Purchase Price.* The purchase price (the "Purchase Price") of a Redeemed Member's interest shall equal:

- (i) The amount that the Redeemed Member would have received had the Company (A) terminated on the date the Redemption Notice was given, (B) sold all of its assets at their fair market values on the date the Redemption Notice was given (net of Management's estimate of the costs and expenses of such sale), (C) satisfied all of its debts and obligations and (D) made distributions to the Members in accordance with Section 18.2, *less* any distributions made to the Redeemed Member after the date the Redemption Notice is given up until the Redemption Closing Date.
- (ii) The fair market values of the Company's assets shall be determined by Management.
- (iii) The Purchase Price shall be determined in accordance with the following additional provisions:
 - (A) In the case of a redemption for Cause, (I) the Purchase Price shall not exceed the Redeemed Member's Unreturned Capital and (if any) accrued but unpaid preferred returns and (II) the Purchase Price shall be reduced by all of the Company's reasonable costs and expenses associated with the redemption, including without limitation attorney's and other professional fees, filing fees and transfer taxes.
 - (B) In the case of a redemption for Good Reason, the Purchase Price shall be reduced by 50 percent of the Company's reasonable costs and expenses associated with the redemption, including without limitation attorneys and other professional fees, filing fees and transfer taxes.

(e) *Payment of Purchase Price.* The Purchase Price shall be paid on the Redemption Closing Date. In the case of a redemption for Cause or for Good Reason, the Purchase Price shall be paid on the Redemption Closing Date in the form of an unsecured promissory note (the "Redemption Note") payable to the Redeemed Member and payable over a two year term. The principal amount of the Redemption

Note shall bear interest at the Base Rate in effect on the Redemption Closing Date. Level payments of interest and principal shall be made on the Redemption Note on a quarterly basis to fully amortize the principal balance over the term of the Redemption Note. The first payment under the Redemption Note shall be due 90 days after the Redemption Closing Date. Further:

- (i) The Redemption Note shall be prepayable at any time and from time to time.
- (ii) The outstanding balance of the Redemption Note shall be prepaid upon the dissolution of the Company in accordance with Section 18.2(b), but in the case of a redemption for Good Reason, *pari passu* with, and in the case of a redemption for Cause, subordinate to, distributions of Unreturned Capital to the Members in accordance with Section 6.3.
- (iii) The Redemption Note shall be subordinate in all respects to any and all indebtedness of the Company, and at the request of Management or any lender the Redeemed Member (and any other holder of the Redemption Note) shall execute any and all documents required by any lender to confirm or give further effect to such subordination.

(f) *Redemption Closing Date and Closing Deliveries.* The Redemption Closing Date shall be on a date and at the time specified by Management in the Redemption Notice but not later than the 30th day following the date the Redemption Notice is given. Closing shall occur at the Company's principal office or at such other place specified by Management in the Redemption Notice. At the closing, the Company shall tender the Purchase Price (as provided in paragraph (e)) to the Redeemed Member and the Redeemed Member shall accept the same and execute such documents of transfer as Management may request. If the Redeemed Member shall not accept the tender of the Purchase Price or execute said documents, Management shall be entitled to execute the documents of transfer for and on behalf of the Redeemed Member, with the same effect as if the Redeemed Member had done so itself, and the contemplated transfer shall be deemed closed once Management has deposited the Purchase Price (i) as an interpleader in any court of competent jurisdiction (the Redeemed Member hereby irrevocably consents to such interpleader) or (ii) with any bank, trust company, escrow company or law firm under instructions that the same (and any payments made under the Redemption Note after such deposit) may be withdrawn by the Redeemed Member upon demand. The closing of a redemption as contemplated in this paragraph shall not prejudice a Redeemed Member's right to contest the calculation of the Purchase Price but a Redeemed Member shall not be permitted to contest the effectiveness of the closing as contemplated by this paragraph.

(g) *Right of Purchase in Lieu of Redemption.* Management shall have the right to assign the Company's right to acquire the Redeemed Member's interest in the Company to any one or more Members, members of Management or affiliates of any of the foregoing, and the provisions of this Section shall be construed accordingly. The Members waive any claim that the right to redeem a Redeemed Member is a corporate opportunity that cannot be assigned without consideration.

(h) *Allocation of Redeemed Member's Interest.* If Management has not assigned the right to acquire the Redeemed Member's interest in the Company in accordance with the preceding paragraph, the interest of a Redeemed Member shall be reallocated among the remaining Members in accordance with their relative Capital Percentages. If a member of Management possesses a Capital Percentage, the reallocation shall also include such member of Management.

Article 13
Intentionally Omitted

Article 14
Special Covenants

14.1 Confidentiality.

(a) *Restriction on Disclosure.* Each Member recognizes and acknowledges that by virtue of its relationship with the Company it may be exposed to, discover, develop, generate or contribute to the Company's Proprietary Information (as defined below). Each Member agrees that it will not, at any time or in any manner, either directly or indirectly, publish, communicate, divulge, disclose, disseminate or otherwise reveal to any person, or use for any purpose whatsoever any Proprietary Information, except as may be necessary in the course of performing authorized services for the Company or as may be required by applicable order of court, law, statute or regulation. Each Member further agrees to notify the Company before disclosing any Proprietary Information under compulsion of law. Each Member hereby acknowledges that all Proprietary Information is valuable, material and will significantly affect the effective and successful conduct of the Company's business and its goodwill. Each Member will take all necessary steps and precautions to protect any Proprietary Information and shall comply with all policies of the Company in regard to Proprietary Information. Upon the Company's request, a Member shall promptly return to the Company any and all correspondence, notes, data and documents containing or reflecting Proprietary Information, keeping no copies for itself. The rights and protections granted herein are in addition to the rights, remedies and protections afforded to the Company under any applicable law, statute or regulation.

(b) *Definitions.* For the purposes of this Agreement, the term "Proprietary Information" shall mean all information or data relating to the business and affairs of the Company not generally known outside of the Company, including, without limitation, any of the Company's processes, data, designs, compilations of information, apparatus, computer programs, information of or relating to suppliers or customers, customer requirements, vendors, cost or price data, research data, business plans, marketing or sales plans or information, financial data, salary information, policies and procedures, sales know-how or any other information that may be considered to be proprietary to or a trade secret of the Company, whether or not such information is considered a trade secret within the meaning of applicable law. Information shall not be considered "Proprietary Information" if any of the following apply:

- (i) It is already in or enters into the public domain other than as a consequence of a breach of the terms of this Agreement.
- (ii) It is already properly and lawfully in the possession of the receiving party and is not subject to any obligation of secrecy on the receiving party's part.
- (iii) It becomes available to a party on a non-confidential basis from a source other than the Company, provided that such information was properly and lawfully in the possession of such source and not, so far as the receiving party is aware (after making due and careful inquiry), subject to any obligation of secrecy on the part of such source.

(c) *Press Releases.* Without the consent of Management, no Member shall be permitted to make disclosures regarding this Agreement or the transactions contemplated by this Agreement in any press release, tombstone, advertisement or other written public statement unless (and then only to the extent) such disclosures are required under applicable law.

14.2 Competitive Undertakings. Any Member or member of Management may make investments and engage in business ventures of any nature and description independently or with others, including, but not limited to, investments of the character described in Article 3 (or any part thereof), and neither the Company, nor any other Member nor any member of Management shall have any rights in or to such independent investments or businesses or the income or profits derived therefrom.

Article 15
Representations, Warranties and General Indemnification

15.1 Representations and Warranties. Each Member represents and warrants to the Company, the other Members and Management as follows:

(a) Such Member (if an entity) is duly formed and validly existing under the laws of the state in which it was formed and, to the extent required to be qualified to business in the State, is duly qualified and in good standing under the laws of the State.

(b) Such Member has the power and authority to execute this Agreement and comply with the terms and provisions of this Agreement.

(c) All transactions contemplated by this Agreement to be performed by such Member have been duly authorized by all necessary action and do not require the consent or approval of any third party.

(d) This Agreement is a valid and binding agreement of such Member, enforceable in accordance with its terms.

(e) The entry into this Agreement by such Member and the consummation of any transactions contemplated by this Agreement will not (and with the giving of notice or lapse of time or both would not) result in a breach or violation of, or a default or loss of contractual benefits under, such Member's organizational documents, any agreement by which such Member or any of its properties are bound, or any statute, regulation, order or other law to which such Member or any of its properties are subject, or give rise to a lien or other encumbrance upon any of such Member's properties or assets.

(f) There are no brokerage commissions or finder's fees (or any basis therefor) resulting from any action taken by such Member or any person acting or purporting to act on such Member's behalf upon entering into this Agreement.

(g) Such Member is not a foreign person as that term is defined in Section 1445 of the Code.

(h) Such Member's interest in the Company has been or will be acquired solely by and for the account of such Member for investment purposes only and is not being purchased for subdivision, fractionalization, resale or distribution. such Member has no contract, undertaking, agreement or arrangement with any person to sell, transfer or pledge to such person or anyone else such Member's interest (or any portion thereof). and such Member has no present plans or intentions to enter into any such contract, undertaking or arrangement.

(i) Such Member's interest in the Company has not and will not be registered under the Securities Act of 1933, as amended, or the securities laws of any state, and cannot be sold or transferred without compliance with the registration provisions of the Securities Act of 1933, as amended, and the applicable state securities laws, or compliance with exemptions, if any, available thereunder. Such Member understands that neither the Company nor Management has any obligation or intention to

register the interests under any Federal or state securities act or law, or to file the reports to make public the information required by Securities Exchange Commission Rule 144.

(j) Such Member expressly represents that (i) it is not subject to any of the “bad actor” disqualifications within the meaning of Rule 506(d) of Regulation D under the Securities Act of 1933, as amended, and (ii) it is not prohibited from owning an interest in or otherwise being affiliated with the Company pursuant to any applicable law, rule, regulation, order or judgment.

(k) Such Member expressly represents that (i) it has such knowledge and experience in financial and business matters in general, and in investments of the type to be made by the Company in particular, (ii) it is capable of evaluating the merits and risks of an investment in the Company, (iii) its financial condition is such that it has no need for liquidity with respect to its investment in the Company to satisfy any existing or contemplated undertaking or indebtedness, (iv) it is able to bear the economic risk of its investment in the Company for an indefinite period of time, including the risk of losing all of such investment, and loss of such investment would not materially adversely affect it and (v) it has either secured independent tax advice with respect to the investment in the Company, upon which it is solely relying, or it is sufficiently familiar with the income taxation of partnerships that it has deemed such independent advice unnecessary.

(l) Such Member acknowledges that Management has made all documents pertaining to the transaction available and has allowed it an opportunity to ask questions and receive answers thereto and to verify and clarify any information contained in the documents. Such Member is aware of any provisions in this Agreement calling for additional capital contributions and providing for the dilution of its interest in the Company.

(m) Such Member has relied solely upon the documents submitted to it and independent investigations made by it in making the decision to purchase its interest in the Company.

(n) Such Member expressly acknowledges that (i) no Federal or state agency has reviewed or passed upon the adequacy or accuracy of the information set forth in the documents submitted to such Member or made any finding or determination as to the fairness for investment, or any recommendation or endorsement of an investment in the Company, (ii) there are restrictions on the transferability of such Member’s interest in the Company, (iii) there will be no public market for resale of such Member’s interest in the Company and, accordingly, it may not be possible for such Member to liquidate its investment in the Company, (iv) interests in the Company have not been registered with the Securities and Exchange Commission or any state but have been issued pursuant to exemptions under the Securities Act of 1933, as amended, and applicable state securities laws and (v) any anticipated Federal or state income tax benefits applicable to such Member’s interest may be lost through changes in, or adverse interpretations of, existing laws and regulations.

(o) If the Member is an individual, that his or her bona fide place of residence is as set forth on the signature pages hereof. If the Member is a corporation, partnership or limited liability company, that its bona fide principal place of business is at the address set forth on the signature pages hereof and that it was not formed for the purpose of making an investment in the Company. If the Member is a trust, the aforesaid representations shall be made by the trustee.

15.2 Patriot Act Compliance.

(a) Each Member hereby acknowledges that the Company seeks to comply with all applicable laws concerning money laundering and similar activities. In furtherance of such efforts, such Member hereby represents and agrees that, to the best of such Member’s knowledge based upon

appropriate diligence and investigation: (i) none of the cash or property that is paid or contributed to the Company by such Member shall be derived from, or related to, any activity that is deemed criminal under United States law, (ii) no contribution or payment to the Company by such Member shall (to the extent that such matters are within such Member's control) cause the Company or Management to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 and (iii) such Member is not, nor is any person controlling, controlled by or under common control with such Member, a Prohibited Person. A "Prohibited Person" is any person acting, directly or indirectly, (A) in contravention of any U.S. or international laws and regulations, including anti-money laundering regulations or conventions, (B) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control, as such list may be amended from time to time, (C) for a senior foreign political figure, any member of a senior foreign political figure's immediate family or any close associate of a senior foreign political figure or (D) for a foreign shell bank. The terms and provisions of this Section shall be interpreted and applied in accordance with relevant statutes, regulations and other interpretive authorities. Each Member shall promptly notify Management if any of the foregoing shall cease to be true and accurate with respect to such Member.

(b) Each Member hereby agrees to provide to Management any additional information regarding such Member deemed necessary or convenient by Management to ensure compliance with all applicable laws concerning money laundering and similar illicit activities. Each Member understands and agrees that the Company or Management may release confidential information about such Member and, if applicable, any underlying beneficial owners, to proper authorities if Management, in its sole discretion, determines that it is in the best interests of the Company or its affiliates in light of relevant rules and regulations under the laws set forth above.

(c) Each Member understands and agrees that, if at any time it is discovered that any of the foregoing representations are incorrect, or if otherwise required by applicable law or regulation related to money laundering and similar activities, Management may undertake appropriate actions to ensure compliance with applicable law or regulation, including, but not limited to, segregation and/or redemption of such Member's investment in the Company, cessation of further distributions to such Member, refusal of future capital contributions by such Member, and other similar acts. In the event that Management takes any of the foregoing acts, each Member agrees that Management, in its sole discretion, may manage the remaining portion of such Member's investment in the Company separate and apart from the Company's assets, including without limitation selling or otherwise disposing of such assets and reinvesting the proceeds therefrom. The rights and obligations of Management under this Section shall expressly supersede any duties that Management may have to such Member under the Act or otherwise.

15.3 General Indemnification. Without expanding or limiting the scope of Section 8.8, each Member ("indemnitor") agrees to indemnify and hold harmless the Company and each other Member and member of Management (each an "indemnitee") from and against any and all losses, liabilities, damages, penalties, costs, fees and expenses (including attorney's fees and costs) which the indemnitees may ever sustain, suffer or incur and which relate to or arise out of or in connection with the breach by the indemnitor of any representation, warranty, covenant or agreement made by it in this Agreement or, if applicable, in any subscription for interests in the Company. Each Member shall also indemnify and hold harmless any guarantor of a loan to the Company or any of its affiliates for any liability caused by such Member's wrongful acts or omissions (or those of such Member's affiliates). Any amount due from a Member under this Agreement that is not paid to the Company or other indemnitee on a timely basis shall bear interest at the rate of 500 basis points over the Base Rate from time to time in effect. This Section shall also benefit the officers, directors, shareholders, partners, members, managers, employees, trustees, agents and other representatives of an indemnitee. Nothing in this Section shall limit any remedy of a

party at law or in equity, including specific performance or injunctive relief, upon the breach by another party of any representation, warranty, covenant or agreement made in this Agreement or, if applicable, in any subscription for interests in the Company.

Article 16
Intentionally Omitted

Article 17
Amendments

17.1 Amendments.

(a) *In General.* This Agreement may be amended at any time and from time to time by Management and Members holding not less than a majority of the Capital Percentages.

(b) *By Management Alone.* This Agreement may also be amended by Management alone in order to (i) mitigate the effect of any change in applicable laws or regulations (including with respect to the taxation of carried interests and fee waivers), (ii) correct typographical or other drafting errors, (iii) clarify ambiguities and prevent unintended distortions where the intention of the parties to this Agreement is reasonably evident and (iv) make changes required by any lender.

(c) *Limitations on Authority to Amend.* In no event shall any amendment to this Agreement (i) disproportionately decrease the right of any Member to distributions in relation to Members similarly situated, (ii) cause any Member to incur any additional personal liability with respect to the Company, (iii) require any Member to contribute any additional capital to the Company not already provided for in this Agreement, (iv) eliminate any express right any Member may have in this Agreement to vote on, approve or veto any action or decision relating to the Company or (v) amend this Article – unless in each case the Members adversely affected thereby consent in writing to such modification or amendment.

(d) *Deemed Consent to Amendments.* A Member shall be deemed to have consented to a proposed amendment to this Agreement if it has not objected to the proposed amendment by written notice to Management delivered within five days of Management's written notice to the Members of the proposed amendment. However, a Member shall not be deemed to have consented to any amendment that contravenes any of clauses in paragraph (c) unless it affirmatively consents to the proposed amendment in writing.

17.2 Power of Attorney. Each Member hereby appoints Management as its true and lawful attorney, coupled with an interest in its name, place and stead, to sign, execute, acknowledge, swear to and file any and all documents which in the discretion of such attorney are required to be signed, executed, acknowledged, sworn to or filed by the Member to discharge the purposes of the Company as hereinabove stated or the provisions of this Agreement. Without limitation, among the documents that Management may execute on behalf of each Member shall be the following:

(a) Any amendments to this Agreement when this Agreement is amended in accordance with Section 17.1.

(b) The Charter and any other instrument which may be required of the Company pursuant to the Act or the laws of any other jurisdiction and any amendments thereto that are not prohibited by Section 17.1.

The grant of authority set forth in this Section is a special power of attorney coupled with an interest, is irrevocable and shall survive the death, incapacity, insolvency, bankruptcy, liquidation or dissolution of a Member. may be exercised by Management for a Member by a facsimile signature or by listing the names of all of the Members executing any instrument with the signature of Management, as attorney in fact for all of them. and shall survive the delivery of an assignment by a Member of all or any portion of its interest, except that where the assignee has been approved by Management for admission to the Company as a substituted Member, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling Management to execute, acknowledge and file any instrument necessary to effect such substitution, and the grant of authority set forth in this Section shall be deemed to have been made by such substitute Member.

Article 18
Winding-Up and Dissolution of the Company

18.1 Winding-Up and Dissolution Procedures. Upon an event described in Section 4.2, the affairs of the Company shall be wound-up and the Company shall be dissolved. Management shall preside over the winding-up and dissolution of the Company or may appoint one or more agents to do so. Management shall make such filings in the State and in such other states in which the activities of the Company make it necessary or desirable to do so and do or cause to be done such other acts and things as shall be required to dissolve the Company.

18.2 Distributions Upon Winding-Up. Except as otherwise provided in this Article, the winding-up and dissolution of the Company shall involve:

(a) The orderly sale or other disposition of the Company's non-cash assets within a commercially reasonable time.

(b) The payment or settlement of (and where appropriate, the establishment of reasonable reserves for) the Company's debts and other obligations, including to Members who are creditors, in the order of priority and to the extent provided by law.

(c) The distribution of any remaining sums among the Members in accordance with Section 6.3.

18.3 Distributions In-Kind. In the event that Management determines that it is necessary or desirable to make a distribution of a Company asset in-kind, such asset shall be transferred and conveyed to the Members as tenants in common so as to vest in them undivided interests in the whole of such asset in the same proportions as a cash distribution equal to the value of such asset had been distributed to the Members pursuant to this Agreement. Management may make such an in-kind distribution to fewer than all of the Members as long as any Member not receiving such in-kind distribution (or not receiving such Member's full proportionate share thereof) receives a substitute distribution of cash or another asset of value that results in all Members receiving their full proportionate shares of the aggregate of such distributed cash and assets. All Company assets distributed in-kind shall be valued at fair market value as determined by Management. Any asset distributed in-kind shall be subject to such reasonable conditions and restrictions as Management determines are necessary or desirable in order to preserve the value of the assets distributed or for legal reasons. Management may also make distributions of Company assets in-kind other than in connection with the winding-up of the Company.

18.4 Liquidating Trust. In the discretion of Management, all or any portion of the distributions that would otherwise be made to the Members pursuant to Section 18.2(c) may be distributed to a trust established for the benefit of the Members for the purposes of liquidating Company

assets, collecting amounts owed to the Company and paying any debts or other obligations of the Company arising out of or in connection with the Company. Management shall appoint one or more persons as liquidating trustee. The assets of any such trust shall be distributed to the Members from time to time in the discretion of the liquidating trustee in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement.

18.5 Final Accounting. As part of the winding-up of the Company, a final accounting shall be made of the activities of the Company from the date of the last previous accounting to the date of dissolution.

Article 19
Intentionally Omitted

Article 20
General Provisions

20.1 Notices.

(a) *Notices in Writing*. All notices, demands, offers or other communications required or permitted to be given pursuant to this Agreement shall be in writing.

(b) *Addresses for Notice*. All notices, demands, offers or other communications:

- (i) To a Member shall be addressed to the Member at the address beneath the Member's name on the signature pages of this Agreement or, if applicable, in such Member's subscription agreement.
- (ii) To Management shall be addressed to each member of Management at the address beneath each such person's name on the signature pages of this Agreement.
- (iii) To the Company shall be addressed to the Company in care of each member of Management.

(c) *Method for Change of Address*. Any Member or member of Management may change its address for all future notices, demands, offers or other communications by giving written notice in accordance with this Section to all of the other Members and members of Management stating its new address.

(d) *Stale Addresses*. If a person intending to give a notice, demand, offer or other communication has actual knowledge that the address for notice of the intended recipient is no longer in use and has actual knowledge of the intended recipient's current address, the notice, demand, offer or other communication shall also be effective if delivered to the new address.

(e) *Methods of Delivery*. All notices, demands, offers or other communications shall be transmitted by (i) personal delivery, (ii) recognized overnight courier service (such as FedEx or UPS), (iii) prepaid and registered or certified mail with return receipt requested, (iv) telecopier device (if a telecopier number is shown beneath the person's signature to this Agreement) or (v) electronic mail (if an e-mail address is shown beneath the person's signature to this Agreement).

(f) *Effective Time of Delivery.* All notices, demands, offers or other communications shall be effective (i) upon receipt when personally delivered, (ii) upon receipt when deposited for next day delivery with a recognized overnight courier service (such as FedEx or UPS), (iii) at the beginning of the fourth business day after the business day notice was deposited with the postal service, (iv) when transmitted by telecopier (if a telecopier number is shown beneath the Member's signature to this Agreement) and receipt has been confirmed electronically or otherwise or (v) when transmitted by electronic mail (if an e-mail address is shown beneath the person's signature to this Agreement) and receipt has been confirmed electronically or otherwise.

20.2 Binding Agreement. This Agreement and all the terms and provisions hereof shall be binding upon the parties hereto and their respective legal representatives, heirs, successors and assigns, except as expressly herein otherwise provided.

20.3 Third Party Benefits. Without limiting Section 20.2, and except as provided in Sections 8.7(b), 8.8 and 15.3, the provisions of this Agreement are intended solely to benefit the Company and the parties hereto and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any other person, including without limitation any creditor of the Company (and no such creditor or other person shall be a third party beneficiary of this Agreement), and except as required by the Act, the Members shall have no duty or obligation to any such creditor or other person to make any contributions or return any money or other property to the Company.

20.4 Governing Law. This Agreement shall be construed in conformity with the domestic laws of the State, as applied to agreements whose only parties are residents of the State and which are to be performed entirely within the State.

20.5 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid by such court, shall not be affected thereby.

20.6 No Partnership for Non-Tax Purposes. The Members have formed the Company as a limited liability company under the Act, and expressly do not intend to form a general partnership under the laws of the State or any other state. The Members, in their capacities as such, do not intend to be general partners with each other for any purpose, or general partners as to any third party. The Members covenant and agree to make no statement nor take any action inconsistent with the foregoing. Notwithstanding this paragraph, the Members acknowledge that it is their intent to be treated as partners solely for Federal, state and local income tax purposes and the Company will file tax returns consistent with that treatment.

20.7 Members Not Agents. No Member by virtue of being a Member shall be considered to be an agent of another Member, nor shall any Member be considered an agent of the Company, unless such Member is a member of Management or has been appointed as an officer or designated as an authorized signatory of the Company in accordance with Section 8.9.

20.8 Dispute Resolution.

(a) *Non-Binding Mediation.* If a dispute between the parties arises out of or relates to this Agreement, or the breach thereof, the parties agree to attempt good faith settlement negotiation through non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures ("Mediation").

- (i) Mediation shall be instituted by submission to the AAA of a completed AAA Request for Mediation (or similar form or process specified by AAA), which shall be served on all parties in accordance with the notice provisions of this Agreement within three business days of submission of the Request for Mediation to the AAA.
- (ii) The parties agree to use a single mutually acceptable mediator. If the parties are unable to select a mutually acceptable mediator within 20 days after submission of the Request for Mediation, the AAA shall assign a mediator.
- (iii) Mediation commences upon the selection of a mutually acceptable mediator by the parties or upon the appointment of a mediator by the AAA in accordance with clause (ii) (the "Mediation Commencement Date").
- (iv) The Mediation will be conducted in Chicago, Illinois.
- (v) The fees and expenses associated with the Mediation will be divided equally between or among the parties to the dispute. Each party to the dispute will be responsible for its own attorney's fees and costs incurred in connection with the mediation.
- (vi) In the event the parties have been unable to resolve their dispute within 60 days after the Mediation Commencement Date (the "Mediation Period"), then any of the parties may commence any other dispute resolution procedures provided for in this Section. For clarity, if no party has filed a Request for Mediation, no party may commence any other dispute resolution procedure provided for in this Section. If any party files a Request for Mediation, then unless a binding settlement has been reached by the parties during the Mediation Period, no party may commence any other dispute resolution procedure provided for in this Section until after the Mediation Period.
- (vii) Notwithstanding anything to the contrary herein:
 - (A) The requirement to mediate contained in this paragraph shall not be construed to delay or otherwise interfere with the ability of a party to commence any emergency injunctive action that a party may bring.
 - (B) The requirement to mediate contained in this paragraph shall not apply to any matter in dispute with respect to which the applicable statute of limitations has fewer than 90 days to run.

(b) *Jurisdiction, Venue and Service of Process.* The Company and the parties to this Agreement hereby irrevocably and unconditionally agree that any suit, action or proceeding arising out of or related to this Agreement or the Company shall be brought only in the United States District Court for the Northern District of Illinois or in the Circuit Court of Cook County, Chicago, Illinois, and the specific choice from among the foregoing shall be determined by the party initiating such suit, action or proceeding. To the fullest extent permissible by law, the Company and the parties to this Agreement hereby consent to the personal jurisdiction, venue and forum of such courts and hereby irrevocably and unconditionally waive any claim or objection that it is not subject to the jurisdiction of such courts, that the venue is improper, that the forum is inconvenient or any similar objection, claim or argument. Service of process on any of the parties hereto with regard to any such action may be made and is considered

legally proper by mailing the process to such person by certified mail to the address of such person as provided in Section 20.1 or to any subsequent address to which notices shall be sent.

(c) *Waiver of Trial by Jury.* Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury with respect to any litigation directly or indirectly arising out of or relating to this Agreement. Each party understands and has considered the implications of this waiver. Each party makes this waiver voluntarily.

(d) *Attorney's Fees.* If the Company, any Member or any member of Management obtains a judgment in connection with a dispute arising under or in connection with any this Agreement, such party shall be entitled to recover from the non-prevailing party its court costs and reasonable attorney's fees and costs incurred in connection therewith, and in any appeal or enforcement proceeding thereafter, in addition to all other recoverable costs.

20.9 Remedies. Subject to any express provisions of this Agreement, no remedy conferred upon the Company, any Member or any member of Management is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by statute, at law or in equity.

20.10 Waiver. No waiver by the Company, any Member or any member of Management of any breach of this Agreement shall be deemed to be a waiver of any other breach of any kind or nature, and no acceptance of payment or performance by the Company, any Member or any member of Management after any such breach shall be deemed to be a waiver of any breach of this Agreement, whether or not the Company, any Member or any member of Management knows of such breach at the time it accepts such payment or performance. No failure or delay on the part of the Company, any Member or any member of Management to exercise any right it may have shall prevent the exercise thereof by the Company, any Member or any member of Management at any time such other may continue to be so in default, and no such failure or delay shall operate as a waiver of any default.

20.11 Entire Understanding. This Agreement constitutes the entire understanding among the Members and the members of Management, and supersedes any prior understanding and/or written or oral agreements among them with respect to the subject matter of this Agreement. In the event of any conflict between this Agreement and any other written or oral communications between the Company, any member of Management or any employee or agent of the foregoing, and the Members (including an offering memorandum for the issuance of interests in the Company, if any), this Agreement shall control and take precedence. As used in this Section, the term "this Agreement" shall include any subscription agreement that a Member may have entered into with the Company in connection with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge that, as of the date hereof, Management, on its own behalf and/or on behalf of the Company, may agree in letters or other writings with one or more Members (each, an "other agreement"), and may from time to time hereafter agree in other agreements entered into with one or more Members to be admitted to the Company following the date hereof, in its sole discretion, to exceptions to, departures from or modifications of the provisions of this Agreement or to additional terms and conditions not set forth in this Agreement. Each other agreement, as in effect from time to time, shall be incorporated herein by reference only with respect to the Member or Members who are parties thereto. The parties hereto agree that any such exceptions, departures, modifications and/or additional terms and conditions contained in another agreement with a Member shall govern with respect to the Member who is a party to such other agreement notwithstanding the provisions of this Agreement.

20.12 Further Assurances. Each of the parties hereto shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof. Recognizing that the Company, the Members and Management may find it necessary from time to time to establish to third parties the then-current status of performance hereunder, each party hereto shall upon the written request of another party hereto made reasonably from time to time furnish promptly a written statement of the status of any matter pertaining to this Agreement or the Company to the best of its knowledge and belief.

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

20.14 Manner of Execution and Transmission.

(a) *Manner of Execution*. This Agreement may be executed (i) as an original in ink, (ii) by facsimile signature (e.g., a signature reproduction by physical or electronic stamp) or (iii) by any electronic signature complying with (A) the U.S. Federal E-SIGN Act of 2000, (B) the laws of the State and/or (C) with respect to a particular person signing this Agreement, the laws of the state in which such person executed this Agreement.

(b) *Manner of Transmission*. Any counterpart containing a qualifying signature transmitted electronically (e.g., via e-mail or telecopier machine) shall be accepted as an original and shall have the same force and effect as an original.

20.15 Counsel. Management ("Directing Party") has selected Levenfeld Pearlstein, LLC ("LP") to prepare this Agreement.

(a) LP is counsel to Directing Party and/or one or more of its affiliates.

(b) Each party to this Agreement acknowledges that LP (i) does not represent the interests of any party other than Directing Party in the preparation or negotiation of this Agreement and (ii) that LP shall owe no duties to the Company or other party other than Directing Party in the preparation or negotiation of this Agreement, even if LP has in the past represented or is currently representing such other party with respect to other matters.

(c) In the event any dispute or controversy arises between the Company or a party, on the one hand, and Directing Party and/or any of its affiliates, on the other hand, each party agrees that LP may represent Directing Party and/or any of its affiliates in any such dispute or controversy. The Company and each party to this Agreement consent to such representation and the Company and hereby agree to waive any conflict of interest that may arise as a result of such representation.

(d) To the extent that Directing Party requests that LP do so, LP may also represent the Company and/or Management in any matter, including in any dispute with any party other than Directing Party. The Company and each party to this Agreement consent to such representation and hereby agree to waive any conflict of interest that may arise as a result of such representation.

[Signatures begin on the next page]

[Signature Page to Operating Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

MANAGER:

SE 13200 PIONEER (EDEN PRAIRIE) DTA, LLC,
a Delaware limited liability company

By: _____
Richard Kaplan, Manager

350 N. LaSalle Street, Suite 800
Chicago, Illinois 60654

MEMBERS:

Members are identified on EXHIBIT A to this Agreement. Member signatures are not required as the Company was formed under the authority of the Manager in its capacity as Discretionary Trust Administrator of the Trust, by agreement of all of the beneficiaries of the Trust, who are the Members of the Company as shown on EXHIBIT A.

EXHIBIT A

Schedule of Members and Capital Percentages

NAME AND ADDRESS OF MEMBER

CAPITAL PERCENTAGE