conduct set forth in this Article VII; or (b) issuance of a final court judgment or order requiring indemnification or stating that it would be lawful in the specific case. The determination described in Section 7.2(a) shall be made by the Members by a vote of Members holding at least two-thirds of the Percentage Interests.

7.3 **Cooperation of Indemnity.** Any Person seeking indemnification pursuant to this Article VII shall promptly notify the Company of any action, suit, or proceeding for which indemnification is sought and shall in all ways cooperate fully with the Company and its insurer, if any, in their efforts to determine whether or not indemnification is proper in the circumstances, given the applicable standard of conduct set forth in this Article VII.

Any Person seeking indemnification pursuant to this Article VII other than with respect to (a) a criminal action, suit, or proceeding; or (b) an action, suit, or proceeding by or in the right of the Company, shall (i) allow the Company and/or its insurer the right to assume direction and control of the defense thereof, if they elect to do so, including the right to select or approve defense counsel; (ii) allow the Company and/or its insurer the right to settle such actions, suits, or proceedings at the sole discretion of the Company and/or its insurer; and (iii) cooperate fully with the Company and its insurer in defending against, and settling such actions, suits, or proceedings.

7.4 **Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit, or proceeding brought other than by the Company shall be paid by the Company in advance until earlier to occur of (a) the final disposition of the action, suit, or proceeding in the specific case; or (b) a determination by the Members that indemnification is not proper under the circumstances because the applicable standard of conduct set forth in Article VII has not been met. Expenses incurred in defending a civil or criminal action, suit, or proceeding brought by the Company may be paid by the Company in advance of final disposition of the action, suit, or proceeding, as authorized by the Members in their sole discretion in the specific case. Any advance of expenses shall not commence until receipt by the Members of an undertaking by or on behalf of the individual seeking such advance to repay any advanced amount unless it shall ultimately be determined that he/she is entitled

to be indemnified by the Company as authorized in this Article VII.

7.5 **Non-Exclusivity.** The indemnification provided by this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Act, the Articles, or this Operating Agreement, or any agreement, vote of Members or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, and shall continue as to Person who has ceased to be a Member, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such Person.

7.6 **Insurance.** The Company may purchase and maintain insurance on behalf of any Person who is or was a Member, officer, employee, or agent of the Company, or was serving the Company with a contractual commitment of indemnification, or is or was serving at the request of the Company as a member, manager, director, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of his/her status as such, whether or not the Company would have the power to indemnify him/her against such liability under provisions of the Act, as amended from time to time.

7.7 **Additional Indemnification.** The Company may provide further indemnity, in addition to the indemnity provided by this Article VII to any Person who is or was a Manager, Member, or officer of the Company, or is or was serving the Company with a contractual commitment of indemnification, or is or was serving at the request of the Company as a member, manager, director, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise, provided that no such indemnity shall indemnify any Person from or on account of such Person's conduct which finally adjudged to have been knowingly fraudulent, deliberately dishonest, or will misconduct.

7.8 **Set-off.** The Company's indemnity of any Person who is or was a Manager, Member, or officer of the Company, or is or was serving the Company with contractual commitment of indemnification, or is or was serving at the request of the Company as a member, manager, director, officer, employee, or agent of another limited liability company, corporation, partnership,

joint venture, trust, or other enterprise, shall be reduced by any amounts such Person may collect as indemnification (a) under any policy of insurance purchased and maintained on his/her behalf by the Company; or (b) from such other limited liability company, corporation, partnership, joint venture, trust, or other enterprise, or from insurance purchased by any of them.

7.9 **Limitation.** Nothing contained in this Article VII, or elsewhere in this agreement, shall operate to indemnify any Manager, Member, officer, or other Person if such indemnification is for any reason contrary to law, either as a matter of public policy, or under the provisions of the Federal Securities Act of 1933, the Securities Exchange Act of 1934, or any other applicable state or federal law.

7.10 **Constituent Entities.** For purposes of this Article VII, references to "the Company" include all constituent entities absorbed in a consolidation or merger as well as the resulting or surviving entity so that any Person who is or was a member, manager, director, officer, employee, or agent of such a constituent entity or was serving at the request of such constituent entity as a member, manager, director, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise shall stand in the same position under provisions of this Article VII with respect to the resulting or surviving entity in the same capacity.

7.11 **Amendment.** This Article VII may be hereafter amended or repealed, provided, however, that no amendment or repeal shall reduce, terminate, or otherwise adversely affect the right of a Person entitled to obtain indemnification hereunder with respect to acts or omissions of such Person occurring prior to the effective date of such amendment or repeal.

ARTICLE VIII
BOOKS, ACCOUNTING, AND REPORTS

8.1 **Books and Records.** The Company shall maintain appropriate books and records with respect to the business and affairs of the Company. The Company shall keep its books and records at the principal office of the Company. Such books and records shall include, without limitation, the following:

(a) A current and a past list, setting forth the full names and last known addresses of each Member, set forth in alphabetical order;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles or amendments have been executed;

(c) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years or such longer period as may be required by law, or, if such returns and reports were not prepared for any reason, copies of the information and records provided to, or which should have been provided to, the Members to enable them to prepare their federal, state, and local tax returns for such period;

(d) Copies of the current effective Company operating agreement, together with all amendments thereto, and copies of any Company operating agreements no longer in effect;

(e) Copies of any financial statements of the Company for the three most recent years or such longer period as may be required by law;

(f) A writing setting forth the amount of cash and a statement of the agreed value of other property or services contributed by each Member, and the times at which or events upon happening of which additional contributions agreed to be made by the Member are to be made;

(g) Copies of any written promises by a Member to make a Capital Contribution to the Company;

(h) Copies of any written consents by the Members to admit any Person other than an Original Member as a Member of the Company;

(i) Copies of any written consents by the Members to continue the Company upon an event of withdrawal or disqualification of any Member;

(j) Copies of any other instruments or documents reflecting matters required to be in writing pursuant to the terms of this Agreement.

8.2 **Accounting.** The books and records of the Company shall be maintained on the basis of reasonable accounting methods, consistently applied.

For purposes of determining Capital Accounts, the books and records of the Company shall be maintained in accordance with Code Section 704, this Agreement and, to the extent not inconsistent therewith, generally accepted accounting principals for financial reporting purposes.

Annual financial statements shall be provided to the Members.

8.3 **Fiscal Period.** The Fiscal Period of the Company shall be the calendar year.

ARTICLE IX
TAX MATTERS

9.1 **Taxable Year.** The taxable year of the Company shall be the calendar year.

9.2 **Tax Controversies.** Each Member shall cooperate with the Tax Matters Partner and shall take, or refrain from taking, any action reasonably required by the Tax Matters Partner in connection with any such examination.

9.3 **Taxation as a Partnership.** Neither the Company nor any Manager or Member shall take any action that would cause the Company to be excluded from the application of any provision of Subchapter "K", Chapter 1 of Subtitle "A" of the Code or any similar provision of any state tax laws.

ARTICLE X
ASSIGNMENT OF MEMBERSHIP INTERESTS

10.1 **Right of First Refusal.** If a Member desires to sell part or all of its Interest in the Company to a third party, the Member ("Selling Member") must send notice to the other Members of such and send with that notice a copy of a bona fide legally binding contract to purchase, which contract shall be contingent on this right of first refusal. The other Members have the option within fifteen days after receipt of such notice to exercise this right to purchase all of the Selling Member's Interest in the Company, by sending written notice of such option to the Selling Member. Upon exercise of the option to purchase, the purchasing Members shall purchase all of the