

# FIRST AMENDED COMPANY AGREEMENT OF WINWOOD CLUB APARTMENTS EQUITY PARTNERS, LLC

**\*\*All figures used in this Agreement are estimations and are subject to change\*\***

Any securities created by this Company Agreement, if any, have not been registered with the United States Securities and Exchange Commission in reliance upon an exemption from such registration set forth in the Securities Act of 1933 provided by Section 4(2) thereof, nor have they been registered under the securities or Blue Sky laws of any other jurisdiction. The interests created hereby have been acquired for investment purposes only and may not be offered for sale, pledged, hypothecated, sold or transferred except in compliance with the terms and conditions of this Company Agreement and in a transaction which is either exempt from registration under such Acts or pursuant to an effective registration statement under such Acts.

THIS COMPANY AGREEMENT is made and entered into effective as of November 24, 2025, by the parties who have executed counterparts of this Company Agreement as indicated on the signature page(s) attached.

## ARTICLE 1. DEFINITIONS

The following terms used in this Company Agreement shall have the following meanings (unless otherwise expressly provided herein):

**"Acquisition Fee"** means a one-time acquisition fee of 5% of the purchase price of the Property which shall be paid to Winwood Club Apartments Equity Partners Manager, LLC, at closing of the purchase of the Property. Should the funds not be available at the time of the Closing, the Managers may elect to defer the acquisition fee to be paid out of capital raised or out of profits after all debt service is paid but prior to the payment of any returns to Class A Members. The acquisition fee will, at all times, be subordinate to any secured interest holder.

**"Asset Management Fee"** means an asset management fee of 2% of effective gross revenues from the Property paid to Manager on a monthly basis.

**"Affiliate."** With respect to any Person, (i) in the case of an individual, any blood relative of such Person, (ii) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of any class of the voting securities of or equity interest in such Person; (iii) any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person; or (iv) any officer, director, trustee, partner, member, manager, employee or holder of ten percent (10%) or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust or other entity controlling, controlled by or under common control with such Person.

**"Certificate of Formation."** The Certificate of Formation of WINWOOD CLUB APARTMENTS EQUITY PARTNERS, LLC, as filed with the Texas Secretary of State, as the same may be amended from time to time.

**"Capital Account."** A capital account maintained in accordance with the rules contained in Section 1.704-1(b)(2)(iv) of the Regulations, as amended from time to time.

**"Capital Contribution."** Any contribution to the capital of the Company in cash or property by a Member whenever made.

**“Capital Transaction Event”** means the sale or refinance of the Property, the sale of substantially all of the assets of the Company, or dissolution (or net proceeds of refinance or liquidation, as the case may be).

**“Class A Member(s)”** means the holder(s) of Class A Membership Units.

**“Class A Membership Unit(s)”** means the Membership Unit(s) owned by the Class A Member(s).

**“Class B Member(s)”** means the holder(s) of Class B Membership Units.

**“Class B Membership Unit(s)”** means the Membership Unit(s) owned by the Class B Member(s).

**"Code."** The Internal Revenue Code of 1986, as amended from time to time.

**"Company."** WINWOOD CLUB APARTMENTS EQUITY PARTNERS, LLC, a Texas limited liability company.

**“Disability.”** The failure or inability of a Manager or Member to fulfill his obligations under this Company Agreement for a period in excess of ninety (90) consecutive days.

**“Disposition Fee”** means a fee paid to Manager at the sale of the Property representing 1% of the sales price of the Property.

**"Economic Interest."** A Member's share of one or more of the Company's Net Profits, Net Losses and rights to distributions of the Company's assets pursuant to this Company Agreement and the Texas Revised Limited Liability Company Act, not including any right to vote on, consent to or otherwise participate in any decision of the Members.

**"Entity."** Any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization, or any other legal entity.

**"Fiscal Year."** The Company's fiscal year shall end on December 31<sup>st</sup> unless otherwise decided by a Majority Vote of the Managers.

**“Gross Asset Value.”** With respect to any asset, the asset's adjusted basis for Federal income tax purposes, adjusted as provided in this Agreement.

**"Initial Capital Contribution."** The initial contribution to the capital of the Company made by a Member pursuant to this Company Agreement.

**"Interest."** Any interest in the Company, including a Membership Interest, an Economic Interest, any right to vote or participate in the business of the Company, or any other interest in the Company.

**“Liquidation.”** Defined as set forth in Section 1.704-1(b)(2)(ii)(g) of the Regulations.

**"Majority Interest."** Ownership Percentages of Members which, taken together, constitute more than fifty percent (50%) of all Ownership Percentages.

**"Majority Vote."** (i) With respect to Members, the vote or written consent of Members holding more than fifty percent (50%) of the Ownership Percentages held by all such Members entitled to vote on or consent to the issue in question; (ii) with respect to Managers, the vote or written consent of more than fifty percent (50%) of the Managers entitled to vote on or consent to the issue in question.

**"Manager."** One or more managers designated pursuant to this Company Agreement. A Manager is not required to be a Member of the Company.

**"Member."** Each Person who executes this Company Agreement or a counterpart thereof as a Member and each of the Persons who may hereafter become Members as provided in this Company Agreement.

**"Membership Interest."** A Member's entire Interest in the Company including such Member's Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Company Agreement.

**"Net Capital Proceeds"** means the excess of sale or re-finance revenue, over sales or re-finance costs and fees, including but not limited to repayment of debt, sales commissions, sales fees, establishment of necessary Reserves, cash expenditures incurred incident to the sales process, re-finance/origination fees, broker fees, the Disposition Fee, and any other cash expenditures incurred in the re-finance of the Property. Any Reserves returned to the Company by any lending institution or any other source may be considered a Capital Transaction Event and part of Net Capital Proceeds in the Manager's sole discretion.

**"Net Cash Flow"** means the excess of operating revenues from the ownership of the Property over operating expenses and other expenditures for such fiscal period, including but not limited to principal and interest payments on indebtedness of the Company, other sums paid to lenders, and cash expenditures incurred incident to the normal operation of the Company's business (including the Asset Management Fee), increased by the amount (if any) of all allowances for cost recovery, amortization or depreciation with respect to property of the Company for such fiscal period, and adjusted for changes to Reserves during such fiscal period.

**"Net Profits" and "Net Losses."** The Company's taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss); provided, such Net Profits and Net Losses will be computed as if items of tax-exempt income and nondeductible, non-capital expenditures (under Code Section 705(a)(1)(B) and 705(a)(2)(B)) were included in the computation of taxable income or loss. If any Member contributes property to the Company with an initial book value to the Company different from its adjusted basis for federal income tax purposes to the Company, or if Company property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Regulations or as otherwise required by the Regulations, Net Profits and Net Losses will be computed as if the initial adjusted basis for federal income tax purposes to the Company of such contributed or revalued property equaled its initial book value to the Company as of the date of contribution or revaluation. All profits are considered K-1 income and not 1099 interest income as defined by the Code.

**"Officer."** One or more individuals appointed by the Managers to whom the Managers delegate specified responsibilities. The Managers may, but shall not be required to, create such offices as they deem appropriate, including, but not limited to, a President, Executive Vice President, Senior Vice Presidents, Vice Presidents, Secretary and Treasurer. The Officers shall have such duties as are assigned to them by the Managers from time to time. All Officers shall serve at the pleasure of the Managers and the Managers may remove any Officer from office without cause and any Officer may resign at any time.

**"Company Agreement."** This Company Agreement as originally executed and as amended from time to time.

**"Ownership Percentage."** For each Member, the ownership percentage in the Company, as set forth in Exhibit A attached hereto, or as otherwise established and agreed to by the Members by Majority Vote and

reflected in an amended Exhibit A. For purposes of the provisions hereof relating to actions taken or approval by Members, including voting, written consents or other approval, only Ownership Percentages held by Members shall be taken into account.

**"Person."** Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

**"Preferred Return"** means a cumulative but non-compounded per annum return of 8% for Class A Members based on their respective Capital Contributions. See Section 9.3 for additional terms.

**"Principal"** for the purposes of this Agreement means Winwood Club Apartments Equity Partners, LLC, a Texas limited liability company. Company has not since the date of its formation and shall not and agrees that it has at all times since its formation and at all times, thereafter:

- i. was and will be organized solely for the purpose of owning the Property;
- ii. has not engaged and will not engage in any business unrelated to the ownership of the Property;
- iii. has not had and will not have any assets other, with respect to the Company, than those related to the Property or, with respect to the Principal, than those related to its membership interest in the Company;
- iv. has not engaged, sought or consented to and will not engage in, seek or consent to any division, dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by this Agreement), transfer of membership interests or the like, or amendment of its limited partnership agreement, articles of incorporation, Certificate of Formation, certificate of formation or Company Agreement (as applicable);
- v. has not, and without the unanimous consent of all of its managers and/or members, as applicable, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;
- vi. has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;
- vii. has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;
- viii. has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;
- ix. has maintained and will maintain its books, records, resolutions and agreements as official records;
- x. has not commingled and will not commingle its funds or assets with those of any other Person;
- xi. has held and will hold its assets in its own name;
- xii. has conducted and will conduct its business in its name,
- xiii. has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;
- xiv. has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;
- xv. has observed and will observe all corporate or limited liability company formalities, as applicable;
- xvi. has maintained and will maintain an arm's-length relationship with its Affiliates;
- xvii. (a) with respect to the Company, has not and will not have any indebtedness other than Permitted Indebtedness, and (b) will have no indebtedness other than unsecured trade payables in the ordinary

- course of business relating to acting as a member of the Company which owns the Property which (1) do not exceed, at any time, \$50,000 and (2) are paid within thirty (30) days of the date incurred;
- xviii. has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;
  - xix. has not and will not acquire obligations or securities of its members or shareholders, as applicable;
  - xx. has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;
  - xxi. except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;
  - xxii. has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;
  - xxiii. has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
  - xxiv. has not made and will not make loans to any Person;
  - xxv. has not identified and will not identify its members or shareholders, or any Affiliate of any of them, as a division or part of it;
  - xxvi. has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;
  - xxvii. has and will have no obligation to indemnify its officers, directors, managers, or members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation; and
  - xxviii. will consider the interests of its creditors in connection with all corporate, or limited liability company actions, as applicable.

**"Property"** means the real property located at 717 Hill Country Drive, Kerrville, Texas 78028, commonly known as the Winwood Club, together with all improvements, fixtures, and appurtenances thereto, which the Company intends to acquire.

**"Reserves."** Funds set aside and amounts allocated to reserves in amounts determined by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

**"Single-Purpose Entity"** means the Company will: (a) not engage in any business or activity, other than the ownership, operation and maintenance of the Property and activities incidental thereto; (b) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Property as may be necessary for the operation of the Property and will conduct and operate its business as presently conducted and operated; (c) preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and will do all things necessary to observe organizational formalities; (d) not merge or consolidate with any other natural person or form of entity; (e) not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; issue additional partnership, membership or other equity interests, as applicable, or seek to accomplish any of the foregoing; and (f) not maintain its assets in a way difficult to segregate and identify

**"Treasury Regulations" or "Regulations."** The federal income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time

(including corresponding provisions of succeeding regulations).

“**Vote**” means one vote for every Percentage Interest and includes written consent.

## ARTICLE 2. FORMATION OF COMPANY

**Section 2.1 Formation.** On April 1, 2025, the Company was formed as a Texas limited liability company by the filing of the Certificate of Formation with the Secretary of State of Texas in accordance with the provisions of the Texas Business Organizations Code. All actions taken by the Organizer of the Company are hereby ratified and approved by the Members and Managers and the Organizer shall have no liability to the Company or to third parties for any reason whatsoever.

**Section 2.2 Name.** The name of the Company is Winwood Club Apartments Equity Partners, LLC.

**Section 2.3 Principal Place of Business.** The principal place of business of the Company is 717 Hill Country Drive, Kerrville, Texas 78028. The Company may locate its places of business and registered office at any other place or places as the Managers may from time to time deem advisable.

**Section 2.4 Registered Office and Registered Agent.** The Company's initial registered office shall be at 1501 S Mopac Expy, Ste 220, Austin TX 78746. The initial registered agent is Capitol Corporate Services, Inc. The registered office and registered agent may be changed from time to time by the Managers pursuant to the Texas Business Organizations Code and the applicable rules promulgated thereunder.

**Section 2.5 Term.** The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of Texas and shall continue until the Company is dissolved and its affairs wound up in accordance with the provisions of this Company Agreement or the Texas Business Organizations Code.

**Section 2.6 Purpose of the Company.** The Company is organized for the following objects and purposes:

- (a) raise monies to enable the Company to purchase the Property, and subsequently seek to increase the value;
- (b) to sell the Property;
- (c) to enter into the Loan to be made by Lender to the Company, which Loan is secured by the Property; and
- (d) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Texas that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

It is understood that the foregoing statement of purposes shall not serve as a limitation on the powers or abilities of the Company, which shall be permitted to engage in any and all lawful business activities as shall be permitted under the laws of the State of Texas and any other State the Managers deems in the best interest of the Company.

Notwithstanding the foregoing or any other provision hereof to the contrary, until all indebtedness in connection with the Company's loan secured by a security interest on the Property, is paid-in-full, the Company will remain a Single Purpose Entity.

The Company is hereby authorized to execute, deliver and perform, and the Manager on behalf of the Company is hereby authorized to execute and deliver, the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote

or approval of any other Person notwithstanding any other provision of this Agreement.

### **ARTICLE 3. BUSINESS OF COMPANY**

The business of the Company (the "Business") is to enter any business arrangement or relationship, exercise all rights and powers and engage in all activities as determined by the Manager, which a limited liability company may legally exercise pursuant to the Act. In furtherance thereof, the Company may exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Texas Revised Limited Liability Company Act, and may engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

### **ARTICLE 4. NAMES AND ADDRESSES OF MEMBERS**

The names, Ownership Percentages and addresses of the current Members are set out on Exhibit "A" attached hereto and incorporated herein. Upon the close of the offering all names and addresses of members will be consolidated onto one document and delivered to each member via electronic mail.

### **ARTICLE 5. RIGHTS AND DUTIES OF MANAGERS**

**Section 5.1 Management.** The Manager shall be Winwood Club Equity Partners Manager, LLC that shall supervise day-to-day operations of the Company. In no instance shall there be less than one Manager of the Company. The Manager has the power and authority on the Company's behalf and in its name to manage, administer, and operate the Company's day-to-day business affairs and to do or cause to be done on behalf of the Company anything necessary or appropriate for the same, including but not limited to the powers and authority set forth in the Company Agreement. The Manager's power and authority is subject to the limitations set forth in the Company Agreement. The Manager shall serve until resignation or until its successor is appointed by the Members as provided in the Company Agreement.

**Section 5.2 Number, Tenure and Qualifications** The Manager shall be Winwood Club Equity Partners Manager, LLC that shall supervise day-to-day operations of the Company. In no instance shall there be less than one Manager of the Company. The number of Managers may be increased by a Majority Vote of the Class B Members. Managers shall hold office until their successor shall have been elected and qualified by the Class B Members or until earlier death, disability, resignation or removal. Subject to the foregoing, Managers shall be elected or removed by the affirmative Majority Vote of Class B Members.

**Section 5.3 Agency Authority of Manager.** If more than one Manager holds office, then any of them shall be authorized to sign checks, contracts and obligations on behalf of the Company. Any Manager, acting alone, is authorized to endorse checks, drafts and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts.

**Section 5.4 Certain Powers of Managers.** Without limiting the generality of Section 5.1, the Managers shall have power and authority, on behalf of the Company:

(a) To acquire property from any Person as the Managers may determine. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Managers from dealing with that Person;

(b) To borrow money for the Company from banks, other lending institutions, Managers, Members, or Affiliates of a Manager or Member on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of

the Company except by the Managers, or by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Managers;

- (c) To purchase liability and other insurance to protect the Company's property and business;
- (d) To hold real and/or personal property in the name of the Company;
- (e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;
- (f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;
- (g) To execute on behalf of the Company all instruments and documents, including, without limitation: checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, Company Agreements of other limited liability companies, and any other instruments or documents necessary, in the opinion of the Managers, to the business of the Company;
- (h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;
- (i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve;
- (j) To pay any Manager a reasonable fee for services;
- (k) To create offices and designate Officers; and
- (l) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by the Managers of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the previous sentence.

**Section 5.5 Liability for Certain Acts.** No Manager or Member has guaranteed or shall have any obligation with respect to the return of a Member's Capital Contributions or profits from the operation of the Company. Notwithstanding the Texas Business Organizations Code, no Manager or Member shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member except loss or damage resulting from the intentional misconduct or knowing violation of law or a transaction for which such Manager received a personal benefit in violation or breach of the provisions of the Company Agreement. Each Manager shall be entitled to rely on information, opinions, reports or statements, including but not limited to financial statements or other financial data prepared or presented by: (i) any one or more Members, Managers, Officers or employees of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented, (ii) legal counsel, public accountants, or other persons as to matters the Manager reasonably believes are within the person's professional or expert competence, or (iii) a committee of Managers of which he or she is not a member if the Manager reasonably believes the committee merits confidence.

**Section 5.6 Managers Have No Exclusive Duty to Company.** Any Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Company Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom. The Managers shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.

**Section 5.7 Bank Accounts.** The Managers may from time to time open bank accounts in the name of the Company, and designated Manager(s) shall be the sole signatories thereon, unless the Managers determine otherwise.

**Section 5.8 Indemnity of the Managers, Members, Officers, Employees and Other Agents.** To the fullest extent permitted by the Texas Business Organizations Code, the Company shall indemnify each Manager and Member and make advances for expenses to each Manager and Member arising from any loss, cost, expense, damage, claim or demand, in connection with the Company, the Manager's or Member's status as a Manager or Member of the Company, the Manager's or Member's participation in the management, business and affairs of the Company or such Manager's or Member's activities on behalf of the Company. To the fullest extent permitted by the Texas Business Organizations Code, the Company shall also indemnify its Officers, employees and other agents who are not Managers or Members arising from any loss, cost, expense, damage, claim or demand in connection with the Company, any such Person's participation in the business and affairs of the Company or such Person's activities on behalf of the Company.

**Section 5.9 Resignation.** Any Manager of the Company may resign at any time by giving thirty (30) days written notice to the Members of the Company. The resignation of any Manager shall take effect upon the date specified in such notice, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of the Manager as a Member or an Option Event, except as provided in Article 12.

**Section 5.10 Removal.** Any Manager may be removed for Cause upon the vote of not less than a three-quarters majority of the Ownership Percentage of the Company as a whole. In the event of removal for Cause, the removal shall be effective sixty (60) days following the vote. A Manager desiring to dispute the existence of Cause for their removal shall be required to give written notice of intention to dispute the removal within fifteen (15) days of receipt of the written notice of removal. If the removed Manager fails to give notice of a dispute as provided herein, the Manager shall be conclusively presumed to have consented to such removal. Thereafter, if not agreed to by the remaining Members within ten (10) days from receipt of the dispute notice, then the matters giving rise to such removal notice to the Manager shall be submitted to mediation for resolution within thirty (30) days of the expiration of the ten-day period the Members have within which to agree or disagree with the Manager's dispute notice. If still no agreement is reached, then the matters will be submitted to binding arbitration wherein the arbitrator must find that the Manager was grossly negligent or worse thereby giving rise to its removal. Anything less than gross negligence shall remand the notice of removal back to the Company and the Manager shall continue in such capacity in accordance with the terms of this Agreement.

Any removal, transfer, assignment, or any other change in the Manager, for any reason, shall not in any way adversely affect, nor result in the redemption or transfer of, the Class B Units in Winwood Club Equity Partners, LLC held by the Manager or its affiliates.

For purposes of removal of a Manager, "for Cause" shall mean any of the following:

(a) A Manager is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for or against the other under any provision of the

Federal Bankruptcy Act or any amendment thereof which is not removed within sixty (60) days after notice from the Company;

(b) The willful and continued failure of a Manager to substantially perform that party's customary duties (other than due to such party's death or incapacity due to physical or mental illness), the reckless disregard of the performance of such party's duties, or the willful engaging by the breaching party in gross misconduct which is materially injurious to the other party, monetarily or otherwise;

(c) If an individual, the inability of a Manager to perform his duties hereunder by reason of illness, or physical or mental incapacity of any kind, for a period of more than sixty (60) days. If disputed by the Manager, the Manager shall submit to a medical examination by a qualified medical doctor selected by the Company to determine the Manager's ability to perform his duties; or

(d) Any actions by a Manager causing or resulting in either of the following:

(1) Conviction, whether as a result of a guilty plea, a plea of nolo contendere or a verdict of guilty, of a felony, or of any criminal offense involving moral turpitude such as rape, statutory rape, fraud, embezzlement, gross sexual imposition, theft or offenses of similar import; or

(2) Misrepresentation or false, misleading, inaccurate statements of material facts in connection with the rendering of services as a Manager.

**Section 5.11 Vacancies.** Any vacancy occurring for any reason in the number of Managers of the Company shall be filled by the unanimous vote of the remaining Managers and by the unanimous vote of the Members if there are no remaining Managers.

**Section 5.12 Compensation of Manager.** The Manager shall be reimbursed for any direct funds or expenses advanced by it prior to or after formation of the Company to the extent that such expenses are incurred or paid directly on behalf of the Company.

The Manager and its Affiliates shall be entitled to collect the following fees (all percentages are based on purchase price unless otherwise stated) and compensation:

(a) Acquisition Fee – 5% of the purchase price of the Property payable to Winwood Club Equity Partners Manager, LLC;

(b) Asset Management Fee – 2% of Gross Revenue payable to Winwood Club Equity Partners Manager, LLC; and

(c) Disposition Fee –1% of the sale price of the Property to Winwood Club Equity Partners Manager, LLC

(d) Net Cash Flow Distribution Waterfall:

First, all Net Cash Flow shall be paid to Class A Members until they receive their respective Preferred Return of 8% per annum.

Second, any remaining Net Cash Flow shall be paid 70% to the Class A Members and 30% to the Class B Members until the Class A Members achieve an average annualized return of 15%.

Finally, any remaining Net Cash Flow shall be paid 50% to the Class A Members and 50% to the Class B Members.

(e) Net Capital Proceeds Distribution Waterfall:

First, all Net Capital Proceeds shall be paid to the Class A Members until they have received any accrued, but unpaid Preferred Return of 8% per annum.

Second, any remaining Net Capital Proceeds shall be paid to the Class A Members until their respective Capital Contributions have been fully returned.

Third, any remaining Net Capital Proceeds shall be paid 70% to the Class A Members and 30% to the Class B Members until the Class A Members achieve an average annualized return of 15%.

Finally, any remaining Net Capital Proceeds shall be paid 50% to the Class A Members and 50% to the Class B Members.

Said fees shall be subject and subordinate in priority to the Loan and Loan Documents but superior to any return of capital or returns to Members.

**Section 5.13 Loan Compliance.** The Managers and Principal on behalf of the Company shall cause the Company to do or cause to be done all things necessary to comply with the representations, warranties and covenants contained in the Loan Documents including, but not limited to, the Loan Agreement of any Lender encumbering the Property identified herein.

## ARTICLE 6. RIGHTS AND OBLIGATIONS OF MEMBERS

**Section 6.1 Limitation on Liability.** Except as otherwise provided by law or this Agreement, each Member's liability for the debts, obligations, and liabilities of the Company shall be limited to the amount of such Member's Capital Contribution, as set forth in the Texas Business Organizations Code.

**Section 6.2 No Liability for Company Obligations.** No Member will have any personal liability for any debts or losses of the Company.

**Section 6.3 List of Members.** Upon written request of any Member, the Company shall provide a list showing the names, addresses and Ownership Percentage of all Members and the other information required by the Texas Business Organizations Code. Each of the parties to this Agreement (other than the initial Manager), and each Person admitted as a Member of the Company pursuant to the Texas Business Organizations Code shall be Members of the Company until they cease to be Members in accordance with the provisions of the Texas Business Organizations Code, the Certificate of Formation, or this Agreement. Upon the admission of any new Member, Exhibit A shall be amended accordingly.

**Section 6.4 Approvals of Members/Voting.** The Members shall have no right to make any decisions with regard to the Company, notwithstanding the Texas Business Organizations Code, except as otherwise set forth here:

Subject to the Texas Business Organizations Code and the Certificate of Formation, the affirmative vote of Members holding not less than a majority of the Ownership Percentage of each class voting as a class represented and voting at a duly held meeting at which a quorum of each class is present (which Members voting affirmatively shall constitute at least a majority of the required quorum) shall be required to:

- (a) approve any loan to any Manager or any guarantee of a Manager's obligations;
- (b) amend this Agreement in such a way that would materially and adversely

affect the economic rights of any Class A Member, including but not limited to the Preferred Return, distribution waterfall priorities, or allocation of profits and losses as set forth in this Agreement; and/or

(c) Removal of Manager as set forth in Section 3.12.

6.4.1 Unless a record date for voting purposes has been fixed as provided in this Agreement, only Persons whose names are listed as Members on the records of the Company at the close of business on the business day immediately preceding the day on which notice of the meeting is given or, if such notice is waived, at the close of business on the business day immediately preceding the day on which the meeting of Members is held (except that the record date for Members entitled to give consent to action without a meeting shall be determined in accordance with this Agreement) shall be entitled to receive notice of and to vote at such meeting, and such day shall be the record date for such meeting. Any Member entitled to vote on any matter may cast part of the votes in favor of the proposal and refrain from exercising the remaining votes or vote against the proposal (other than for election or removal of a Manager), but if the Member fails to specify the Ownership Percentage such Member is voting affirmatively, it will be conclusively presumed that the Member's approving vote is with respect to all votes such Member is entitled to cast. Such vote may be a voice vote or by ballot; provided, however, that all votes for election or removal of a Manager must be by ballot upon demand made by a Member at any meeting at which such election or removal is to be considered and before the voting begins.

6.4.2 Without limiting the preceding provisions of this Section 6.4, no Person shall be entitled to exercise any voting rights as a Member until such Person (i) shall have been admitted as a Member with voting rights pursuant to the rights set forth in this Agreement, and (ii) shall have paid the Capital Contribution of such Person in accordance with the provisions herein including capital calls, when due, if any.

**Section 6.5 Certificates of Members.** The Company may issue to every Member of the Company a certificate signed by any Manager of the Company specifying the Interest of such Member, which signature may be a facsimile. If a certificate for registered interests is worn out or lost it may be renewed on production of the worn-out certificate or on satisfactory proof of its loss together with such indemnity as may be required by a resolution of the Manager.

**Section 6.6 Classes of Members.** The Company shall have the following classes of Members: Class A Members and Class B Members. Each such class of members shall have the rights, powers, duties, obligations, preferences and privileges set forth in this Agreement. The names of the Members shall be set forth in Exhibit A, as amended from time to time. Any person may simultaneously hold more than one class of membership.

**Section 6.7 Place of Meetings.** All meetings of the Members shall be held at any place designated by the Manager or may be held virtually on a virtual meeting platform (e.g., Zoom, Webex, etc.) designated by the Manager.

**Section 6.8 Meetings of Members.** Annual meeting of Members shall not be required. Meetings of the Members for the purpose of taking any action permitted to be taken by the Members may be called by the Manager, or by Members holding not less than seventy percent (70%) of the Ownership Percentage entitled to vote at the meeting. Upon request in writing that a meeting of Members be called for any proper purpose, the Manager forthwith shall cause notice to be given to the Members entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than ten (10) nor more than sixty

(60) days after receipt of the request. Except in special cases where other express provision is made by statute, written notice of such meetings shall be given to each Member entitled to vote not less than ten (10) nor more than sixty (60) days before the meeting. Such notices shall state:

**6.8.1** The place, date and hour of the meeting – Members may also meet by web conference or conference telephone call if all Members can hear or read one another on such conference and the requisite notice is given or waived; and

**6.8.2** Those matters which the Manager, at the time of the mailing of the notice, intends to present for action by the Members.

**Section 6.9 Quorum.** The presence at any meeting in person or by proxy of Members holding not less than a Majority Interest of the class or classes entitled to vote at such meeting shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the votes required to constitute a quorum.

**Section 6.10 Waiver of Notice.** The actions of any meeting of Members, however called and noticed, and wherever held, shall be as valid as if taken at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice, consent or approval need not specify either the business to be transacted or the purpose of any regular or special meeting of Members, except that if action is taken or proposed to be taken for approval of any of those matters specified in Section 6.4(a)-(c) of this Agreement, the waiver of notice, consent or approval shall state the general nature of such proposal. All such waivers, consents or approvals shall be filed with the Company's records and made a part of the minutes of the meeting. Attendance of a Member at a meeting shall also constitute a waiver of notice of and presence at such meeting, except when the Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice but not so included, if such objection is expressly made at the meeting.

**Section 6.11 Action by Members Without a Meeting.** The initial Manager is Winwood Club Equity Partners Manager, LLC and it will remain the Manager without further vote unless removed in accordance with the provisions herein and so long as removal can be done without causing an event of default under any loan agreements. The Manager may be elected or removed without a meeting so long as an event for removal occurs, as defined herein, by a consent in writing, setting forth the action so taken, signed by Members having not less than the minimum number of votes that would be necessary to elect or remove such Manager in accordance with this Agreement; in addition, a Manager may be elected at any time to fill a vacancy by a written consent signed by Class A and Class B Member having not less than the minimum number of votes that would be necessary to elect such Manager in accordance with this Agreement. Notice of such election shall be promptly given to non-consenting Members. Electronic signatures and counterparts shall be permitted.

Any other action which, under any provision of the Act or the Certificate of Formation or this Agreement, may be taken at a meeting of the Members, may be taken without a meeting, and without notice except as hereinafter set forth, if a consent in writing, setting forth the action so taken, is signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. All such consents shall be filed with the secretary of the Company and shall be maintained in the Company's records. Unless the consents of all Members entitled to vote have been solicited in writing, then (i) notice of any proposed Member approval of any of the matters set forth herein without a meeting by less than unanimous written consent shall be given to

those Members entitled to vote who have not consented in writing at least five (5) days before the consummation of the action authorized by such approval, and (ii) prompt notice shall be given of the taking of any other action approved by Members without a meeting by less than unanimous written consent to those Members entitled to vote who have not consented in writing.

Any Member giving a written consent, or the Member's proxy-holders, or a personal representative of the Member or their respective proxy-holders, may revoke the consent by a writing received by the secretary prior to the time that written consents of the number of votes required to authorize the proposed action have been filed with the secretary, but may not do so thereafter. Such revocation is effective upon its receipt by the secretary or, if there shall be no person then holding such office, upon its receipt by any other officer or Manager of the Company.

**Section 6.12 Record Date.** The Manager or, if there is no Manager then in office, the Members may fix a time in the future as a record date for the determination of the Members entitled to notice of and to vote at any meeting of Members or entitled to give consent to action by the Company in writing without a meeting, to receive any report, to receive any dividend or distribution, or any allotment of rights, or to exercise rights with respect to any change, conversion or exchange of interests. The record date so fixed shall be not more than sixty (60) days nor less than ten (10) days prior to the date of any meeting, nor more than sixty (60) days prior to any other event for the purposes of which it is fixed. When a record date is so fixed, only Members of record at the close of business on that date are entitled to notice of and to vote at any such meeting, to give consent without a meeting, to receive any report, to receive a dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any interests on the books of the Company after the record date, except as otherwise provided by statute or in the Certificate of Formation or this Agreement.

If the Manager or the Members, as the case may be, do not so fix a record date, then (i) the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day immediately preceding the day on which notice is given or, if notice is waived, at the close of business on the business day immediately preceding the day on which the meeting is held, and (ii) the record date for determining Members entitled to give consent to Company action in writing without a meeting shall be the day on which the first written consent is given.

## **ARTICLE 7. MEETINGS OF MANAGERS**

**Section 7.1 Meetings.** Meetings of the Managers, for any purpose or purposes, may be called by the Majority Vote of the Managers.

**Section 7.2 Place of Meetings.** The Persons calling any meeting may designate any place, either within or outside the State of Texas, as the place of meeting for any meeting of the Managers. If no designation is made the place of meeting shall be the principal executive office of the Company in the State of Texas. Any meeting may take place by phone or electronically if so specified in the notice.

**Section 7.3 Notice of Meetings.** Written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than two (2) nor more than fifty (50) days before the date of the meeting, either personally, by electronic mail or by mail, by or at the direction of the Managers calling the meeting, to each Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Manager at its address as it appears on the books of the Company, with postage thereon prepaid.

**Section 7.4 Meeting of All Managers.** If all of the Managers shall meet at any time and place, either within or outside of the State of Texas, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any lawful action may be taken.

**Section 7.5 Record Date.** For the purpose of determining Managers entitled to notice of or to vote at any meeting of Managers or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Managers for any other purpose, the date on which notice of the meeting is mailed or the date on which the distribution is made, as the case may be, shall be the record date for such determination of Managers unless the Managers shall otherwise specify another record date. When a determination of Managers entitled to vote at any meeting of Managers has been made as provided in this Section, such determination shall apply to any adjournment thereof.

**Section 7.6 Quorum.** Managers holding a Majority Interest represented in person or by proxy, shall constitute a quorum at any meeting of Managers. In the absence of a quorum at any such meeting, a majority of the Managers so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if at the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Manager of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Managers present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Ownership Percentages whose absence would cause less than a quorum to be present.

**Section 7.7 Manner of Acting.** The Majority Vote of the Managers shall be the act of the Managers.

**Section 7.8 Proxies.** A Manager may vote in person or by proxy executed in writing by the Manager or by a duly authorized attorney-in-fact. Such written proxy shall be delivered to the Company.

**Section 7.9 Action by Managers Without a Meeting.** Action required or permitted to be taken by the Managers at a meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the Managers entitled to vote. Action taken under this Section is effective when the Managers required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Managers entitled to take action without a meeting shall be the date the first Manager signs a written consent. Any signature delivered by facsimile is acceptable.

**Section 7.10 Waiver of Notice.** When any notice is required to be given to any Manager, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**Section 7.11 Meeting by Telephone.** Managers may also meet by web conference or conference telephone call if all Managers can hear one another on such conference and the requisite notice is given or waived.

**Section 7.12 Liability.** Except as otherwise provided by the Act or this Agreement, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Manager shall be obligated personally for any such debt, obligation or liability of the Company or to any Member solely by reason of being a Manager. Except as otherwise expressly required by law, a Manager, in such Manager's capacity as such, shall have no liability to any Member.

## **ARTICLE 8. CONTRIBUTIONS TO THE COMPANY AND CAPITAL LOANS**

**Section 8.1 Members' Capital Contributions.** Each Member shall contribute the amount set forth next to such Member's name on Exhibit "A" hereto as the Member's Initial Capital Contribution. Upon the making of such contributions, such amounts shall be credited to the Members' respective Capital Accounts. Each Member understands and assumes the risk of investing in the Company and shall be without recourse, including against the Company's assets, should such Member lose such Member's investment. The Manager shall have discretion as to the date at which the subscriptions for Class A Interests shall be closed.

**Section 8.2 Loans to Company.** The Company may borrow funds from Managers or Members on terms and conditions as determined by the Manager. Repayment of such loans shall be on the terms and conditions determined by the Managers. The Company may obtain such further funds as it requires for its operations from sources and on terms, which are acceptable to the Manager, subject to the restrictions herein contained. Neither the Company nor any Member shall have any personal liability as a result of any such borrowing unless such Member shall agree in writing to be personally liable. Notwithstanding the foregoing, the Company shall not acquire funds pursuant to this Section 8.2 if a restriction under the Loan Documents with Lender prohibits the same.

**Section 8.3 Additional Capital Contributions.** Except as otherwise may be expressly provided herein, the Members shall not be required to make additional capital contributions. The Manager shall have the discretion to acquire additional loan assistance (“Capital Call”) in the event that the Company has insufficient funds to operate the Business of the Company or to make required payments on any debt of the Company (collectively “Operating Expenses”). If the Manager at any time or from time to time determines that the Company requires additional Capital Contributions, then the Manager shall give notice to each Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Member's additional Capital Contribution is due and payable, which date shall be no less than ten (10) days after the notice has been given. A Member's share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Member's Percentage Interest and the total additional Capital Contribution required. Each Member's share of the additional Capital Contribution shall be payable in cash or by certified check, or wire transfer. Notwithstanding anything herein to the contrary, no Member shall be required to make any additional Capital Contribution to the Company. If a Member fails to pay when due all or any portion of any additional Capital Contribution required hereunder (each, a “Non-Contributing Member”), then each Member other than any Non-Contributing Member (each, a “Contributing Member”) shall have the right, but not the obligation, to contribute to the Company (in addition to its initial pro rata share of the additional Capital Contribution) its pro rata portion of those amounts that the Non-Contributing Member fails to contribute (the “Remaining Contribution”), and the Manager shall have the right to re-allocate the Percentage Interests based on the then Capital Contributions made by the Contributing Members and Non-Contributing Members. Each Member shall receive a credit to his/her/its Capital Account in the amount of any additional Capital Contribution which he/she/it makes to the Company and shall receive such other rights as have been approved by the Manager in connection with such additional Capital Contribution in accordance with the terms of this Agreement. Immediately following any additional Capital Contribution, the Percentage Interests of the Members may be adjusted if the Manager determines that the Percentage Interests of the Members are to be altered as a result of the additional Capital Contribution, and Exhibit A shall be revised to reflect any such additional Capital Contribution and any such adjustment of the Percentage Interests of the Members. Any revision of Exhibit A in accordance with the preceding sentence shall require only the consent of the Manager (and not any consent of the Members).

## **ARTICLE 9. DISTRIBUTIONS TO MEMBERS**

**Section 9.1 Distributions.** Subject to the distribution waterfall set forth in Section 5.12, Section 9.3, and other provisions of this Agreement, all distributions shall be made to the Members as the Manager may determine in its reasonable discretion, as cash flow allows; provided, that following the dissolution of the Company, distributions shall be made in accordance with Section 14.3 hereof. It is specifically recognized that some Members may receive a distribution that is in excess of their actual tax liabilities, and some Members may receive a distribution that is less.

**Section 9.2 Limitation Upon Distributions.** No distribution shall be made to Members if prohibited by the Texas Revised Limited Liability Company Act. No Member, regardless of the nature of the Member's Capital Contribution, has any right to demand and receive any distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a distribution of any asset in kind.

**Section 9.3 Preferred Return.** The Preferred Return is a cumulative but non-compounded per annum return of eight percent (8%) for Class A Members calculated on their respective unreturned Capital Contributions from the date each Capital Contribution is made until such Capital Contribution is returned. The Preferred Return shall be paid from Net Cash Flow as determined by the Manager in accordance with the distribution waterfall set forth above. The Preferred Return is not guaranteed, meaning that the Preferred Return will not be paid if the Company does not have sufficient Net Cash Flow available to pay it after payment of all Company expenses and debt service, as determined by the Manager in its reasonable discretion. Any unpaid Preferred Return shall accrue on a non-compounded basis and shall be paid by the Manager from future distributions of Net Cash Flow and/or Net Capital Proceeds in accordance with the distribution waterfall. Quarterly distributions of the Preferred Return are not expected to begin until the second full quarter following the close of escrow on the Property.

**Section 9.4 Priority and Return of Capital.** Except as expressly provided in Section 9.3 regarding the Preferred Return for Class A Members, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions. This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member or Manager has made to the Company.

**Section 9.5 Withholding from Distributions.** To the extent that the Company is required by law to withhold or to make tax or other payments on behalf of or with respect to any Member, the Company shall withhold such amounts from any distribution or other amounts owing to such Member and make such payments as so required. Nothing herein shall be construed as the Company's requirement to withhold taxes or make payments on behalf of or with respect to any Member unless the same is required by law. For purposes of this Agreement, any such payments or withholdings shall be treated as a distribution to the Member on behalf of whom the withholding or payment was made.

**Section 9.6 754 Election.** In the event of a distribution of property to a Member, the death of an individual Member or a transfer of any interest in the Company permitted under the Texas Business Organizations Code or this Agreement, the Company may, in the discretion of the Manager upon the written request of the transferor or transferee, file a timely election under Section 754 of the Internal Revenue Code and the Income Tax Regulations thereunder to adjust the basis of the Company's assets under Section 734(b) or 743(b) of the Code and a corresponding election under the applicable provisions of state and local law, and the person making such request shall pay all costs incurred by the Company in connection therewith, including reasonable attorneys' and accountants' fees

## **ARTICLE 10. ALLOCATIONS OF NET PROFITS AND NET LOSSES**

**Section 10.1 Capital Accounts.** A Capital Account shall be established and maintained for each Member in accordance with the following provisions:

a) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to this Agreement, and the amount of any liabilities of the Company that are assumed by such Member, or which are secured by any assets of the Company distributed to such Member.

b) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company assets distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to this Agreement, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

c) If ownership of any Membership Interest in the Company is assigned in accordance with the terms of this Agreement, the assignee shall succeed to the Capital Account of the assignor to the extent it relates to the assigned Membership Interest.

d) In determining the amount of any liability for purposes of the sections above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

e) To each Member's Capital Account, there shall be debited or credited, as the case may be, adjustments which are necessary to reflect a revaluation of Company assets to reflect the Gross Asset Value of all Company assets, as required by Regulations Section 1.704-1(b)(2)(iv)(f) and these sections.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 704 of the Code and Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. The Company shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet as computed for book purposes in accordance with Section 1.704-1(b)(2) (iv)(q) of the Regulations. (e)

The Manager shall direct the Company's accountants to make all necessary adjustments in each Member's Capital Account as required by the capital accounting rules of Section 704(b) of the Code and the regulations thereunder. No Member shall be liable for the return of the capital contributions (or any portion thereof) of any other Member, it being expressly understood that any such return shall be made solely from the assets of the Company. No Member shall be entitled to withdraw any part of such Member's Capital Contributions or Capital Account, to receive interest on such Member's Capital Contributions or Capital Account or to receive any distributions from the Company, except as expressly provided for in this Agreement or under the Act as then in effect.

**Section 10.2 Gross Asset Value.** The Gross Asset Value of any asset of the Company shall be equal to the asset's adjusted basis for Federal income tax purposes, except as follows:

a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company.

b) The Gross Asset Values of all Company assets, excluding goodwill, going concern value and similar intangible assets except to the extent purchased by the Company, shall be adjusted to equal their respective gross fair market values in connection with (and to be effective immediately prior to) the following events: (1) the acquisition of an additional Membership Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (2) the distribution by the Company to a Member of more than a de minimis amount of property (including cash) as consideration for an interest in the Company; and (3) the Liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that an adjustment pursuant to clauses (1) and (2) above may be made if such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company.

c) The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution.

d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and these Sections hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Subsection to the extent that an adjustment pursuant to Subsection

(b) above is made in connection with a transaction that would otherwise result in an adjustment pursuant to this Subsection.

e) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this Section, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**Section 10.3 Allocations.** Each Member's distributive share of income, gain, loss, deduction or credit (or items thereof) of the Company as shown on the annual federal income tax return prepared by the Company's accountants or as finally determined by the United States Internal Revenue Service or the courts, and as modified by the capital accounting rules of Section 704(b) of the Code and the Income Tax Regulations thereunder, as applicable, shall be determined as follows:

- (a) Items of income, loss, deduction or credit (or items thereof) shall be first allocated among the Members in accordance with Section 5.12 except that items of loss or deduction allocated to any Member with respect to any taxable year shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have a deficit balance in his, hers, or its Capital Account at the end of such year, computed in accordance with the rules of paragraph (b)(2)(ii)(d) of Section 1.704-1 of the Income Tax Regulations. Any such items of loss or deduction in excess of the limitation set forth in the preceding sentence shall be allocated as follows and in the following order of priority:
  - (1) first, to those Members who would not be subject to such limitation, in proportion to their Ownership Percentage; and
  - (2) second, any remaining amount to the Members in the manner required by the Code and Income Tax Regulations.
- (b) Items of income and gain (or items thereof) shall be first allocated to the Members in the same manner that losses were allocated in order to reverse any loss allocations.

Subject to the provisions of this Agreement, the items specified in this Section shall be allocated to the Members as necessary to eliminate any deficit Capital Account balances and thereafter to bring the relationship among the Members' positive Capital Account balances in accord with their pro rata interests.

Solely for tax purposes, in determining each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to paragraph (b)(2)(iv)(f) of Section 1.704-1 of the Income Tax Regulations, shall be allocated to the Members in the manner (as to revaluations, in the same manner as) provided in Section 704(c) of the Code. The allocation shall take into account, to the full extent required or permitted by the Code, the difference between the adjusted basis of the property to the Member contributing it (or, with respect to property which has been revalued, the adjusted basis of the property to the Company) and the fair market value of the property determined by the Members at the time of its contribution or revaluation, as the case may be.

**Section 10.4 Manager Travel Costs and Reimbursement.** The Managers may travel to the Property for due diligence and quality assurance purposes prior to closing. If travel occurs, the Managers shall pay for their travel expenses and then reimburse themselves at closing based on raised capital.

**Section 10.5 Depreciation Recapture.** Subject to the provisions of Section 704(c) of the Code and inclusive of this Agreement, gain recognized (or deemed recognized under the provisions hereof) upon the sale or other disposition of Company property, which is subject to depreciation recapture, shall be allocated to the Member who was entitled to deduct such depreciation.

**Section 10.6 Loans.** If and to the extent any Member is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting deduction of the Company shall be allocated to the Member who is charged with the income. Subject to the provisions of Section 704(c) of the Code and provisions of this Agreement, if and to the extent the Company is deemed to recognize income as a result of any loans pursuant to the rules of Sections 1272, 1273, 1274, 7872 or 482 of the Code, or any similar provision now or hereafter in effect, such income shall be allocated to the Member who is entitled to any corresponding resulting deduction.

**Section 10.7 Tax Credits.** Tax credits shall generally be allocated according to Section 1.704-1(b)(4)(ii) of the Income Tax Regulations or as otherwise provided by law. Investment tax credits with respect to any property shall be allocated to the Members pro rata in accordance with the manner in which Company profits are allocated to the Members herein, as of the time such property is placed in service. Recapture of any investment tax credit required by Section 47 of the Code shall be allocated to the Members in the same proportion in which such investment tax credit was allocated .

**Section 10.8 Change of Pro Rata Interests.** Except as provided herein or as otherwise required by law, if the proportionate interests of the Members in the Company are changed during any taxable year, all items to be allocated to the Members for such entire taxable year shall be prorated on the basis of the portion of such taxable year which precedes each such change and the portion of such taxable year on and after each such change according to the number of days in each such portion, and the items so allocated for each such portion shall be allocated to the Members in the manner in which such items are allocated as provided herein during each such portion of the taxable year in question.

**Section 10.9 Effect of Special Allocations on Subsequent Allocations.** Any special allocation of income or gain shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article 10 so that the net amount of all such allocations to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article 10 if such special allocations of income or gain had not occurred.

**Section 10.10 Nonrecourse and Recourse Debt.** Items of deduction and loss attributable to Member nonrecourse debt within the meaning of Section 1.704-2(b)(4) of the Income Tax Regulations shall be allocated to the Members bearing the economic risk of loss with respect to such debt in accordance with Section 1.704-2(i)(1) of the Income Tax Regulations. Items of deduction and loss attributable to recourse liabilities of the Company, within the meaning of Section 1.752-2 of the Income Tax Regulations, shall be allocated among the Members in accordance with the ratio in which the Members share the economic risk of loss for such liabilities.

**Section 10.11 State and Local Items.** Items of income, gain, loss, deduction, credit and tax preference for state and local income tax purposes shall be allocated to and among the Members in a manner consistent with the allocation of such items for federal income tax purposes in accordance with the foregoing provisions.

**Section 10.12 Liability.** Except as otherwise provided by the Act or this Agreement, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member. Except as otherwise expressly required by law, a Member, in such Member's capacity as such, shall have no liability in excess of (i) such Member's Capital Account and share of any undistributed profits of the Company, (ii) such Member's obligations to make other payments pursuant to the obligation to make capital contributions to the Company hereunder which shall be an obligation strictly among and enforceable by the Members, and no third party shall be a third-party beneficiary thereof, and (iii) the amount of any distributions wrongfully distributed to such Member.

## ARTICLE 10. BOOKS AND RECORDS

**Section 10.5 Accounting Period.** The Company's accounting period shall be the Fiscal Year.

**Section 10.6 Records and Reports.** At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the following records:

- (a) A current list of the full name and last known address of each Member and Manager;
- (b) Copies of records to enable a Member to determine the relative voting rights, if any, of the Members;
- (c) A copy of the Certificate of Formation of the Company and all amendments thereto;
- (d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (e) Copies of this Company Agreement, together with any amendments thereto; and
- (f) Copies of any financial statements of the Company for the three most recent years.

The books and records shall at all times be maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Members, or their duly authorized representatives during reasonable business hours.

**Section 10.7 Tax Returns.** The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year.

11.3.1 The Company shall file as a partnership for Federal income tax purposes. Any provision hereof to the contrary notwithstanding, solely for United States federal income tax purposes, each of the Members hereby recognizes that the Company may be subject to the provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of U.S. Partnership Returns of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.

11.3.2 The Managers shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority, and shall make timely filing thereof. Within ninety (90) days after the end of each calendar year, the Manager shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company during such calendar year reasonably required to enable each Member to prepare such Member's federal, state and local income tax returns in accordance with applicable law then prevailing.

11.3.3 Quarterly financial statements (including a "Balance Sheet" and "Income Statement") shall be provided to all Members within 30 days from the end of the reporting quarter. Distribution of quarterly reports by the Manager will begin at the end of the month after 90 days following the close of an acquisition of the property to which the reports pertain. The Manager is not required to have the financial statements audited, reviewed or compiled. The financial statements are not required to use GAAP accounting.

11.3.4 Unless otherwise provided by the Code or the Income Tax Regulations thereunder, Sharif Shakhshir shall be the "Partnership Representative," as such term is used in Code Section

6223 (the "Partnership Representative"). Sharif Shakhshir shall make all decisions for the Company relating to tax matters including, without limitation, whether to make any tax elections (including the election under Section 754 of the Code), the positions to be taken on the Company's tax returns and the settlement, further contest or litigation of any audit matters raised by the Internal Revenue Service or any other taxing authority. A Partnership Representative may resign at any time by giving written notice to the Managers. The resignation of the Partnership Representative shall take effect upon the appointment of a successor Partnership Representative or at such other time agreed upon by the Managers. The resigning Partnership Representative shall follow the directions of the Managers in connection with the appointment of a successor Partnership Representative and the filing of such statements, forms and other documents with the IRS as required by the Partnership Audit Rules. Notwithstanding the foregoing, in the event such resignation is not effective for purposes of the Partnership Audit Rules, the resigning Partnership Representative shall take any and all actions and sign and deliver any and all documents, instruments, elections and agreements as directed by the Managers until such resignation is effective for purposes of the Partnership Audit Rules.

11.3.5 Duties Owed by the Members to the Partnership Representative. Each Member hereby covenants and agrees to promptly provide the Partnership Representative with all information regarding the Member's tax returns and tax liabilities as requested from time to time, including but not limited to proof that the Member has filed an amended return and paid any resulting tax, the Member's address, taxpayer identification number and current contact information, the Member's status as a tax-exempt Member, the tax rate applicable to the Member and the Member's status as an eligible Member. The Member's obligations hereunder shall continue notwithstanding the Member ceasing to be a Member whether resulting from a transfer, sale, withdrawal or other disposition of his/her/its Interests. Each Member shall notify the Partnership Representative of any inconsistent treatment of any Membership item on the Member's return and of any settlement with the IRS regarding any Membership items.

(a) Reliance on Advice. The Partnership Representative may rely on the services and advice of attorneys, accountants and other professional advisors or experts. The Partnership Representative shall not be liable to the Company or to any Member for damages, losses, or costs, any loss of value or any liability arising from such reliance.

(b) Binding Effect of Actions by Partnership Representative. The Company and the Members hereby agree and acknowledge that (a) the actions of the Partnership Representative in connection with the Partnership Audit Rules shall be binding on the Company and the Members; and (b) neither the Company nor the Members have any right to contact the IRS or participate in an audit or proceedings under the Partnership Audit Rules.

## ARTICLE 11. TRANSFERABILITY

**Section 12.1 General Prohibition.** Except as otherwise permitted by this Agreement, no Member may assign, convey, sell, transfer, liquidate, encumber, or in any way alienate by operation of law or otherwise (collectively a "Transfer"), all or any part of his Interest unless otherwise specifically permitted by law, this Agreement and/or unless approved by a Majority Vote of the Managers, which consent may be given or withheld in the sole discretion of each Manager. Any attempted Transfer of all or any portion of an Interest without the necessary consent or as otherwise permitted hereunder, shall be null and void and shall have no effect whatsoever.

**Section 12.2 Permitted Transfers.** A Member may from, time to time, in the sole discretion of Manager, Transfer his/her/their Membership Interest to any one or more of that Member's Immediate Family Members. For purposes of this Article, a Member's "Immediate Family Members" shall mean the Member's spouse, children, and trusts for the primary benefit of the Member himself or such spouse or children. For purposes

of this Agreement, a Transfer permitted under this Section 12.2 shall be referred to as a “Permitted Transfer.” A Member may transfer their Membership Interest for estate planning purposes if such Member first obtains the unanimous written consent of the Manager. All Transfers requested by any Member shall be at the expense of the Transferring Member who shall pay for all costs associated with the transfer, including, but not limited to attorney fees. Notwithstanding the foregoing, no Member shall make any Transfer of any of its Interest, or permit any indirect Transfer of any of its Interest, that would result in the Company being in breach of its Single Asset Entity obligations. In the event that (i) a Member Transfers its Interest, pursuant to this Section 12.2, to a limited liability company controlled by such Member or to a Family Trust, and (ii) at any time thereafter, such Member ceases to control the transferee limited liability company, or such Member ceases to be the sole trustee of the transferee Family Trust (each, a “Triggering Event”), the Company shall have the option to purchase such transferee’s Interest as set forth in Section 12.4.

**Section 12.3 Conditions of Transfer and Assignment.** A transferee of an Interest shall become a Member only if approved by a Majority Vote of the Managers and if the following conditions have been satisfied:

(a) the transferor, his, her, or its legal representative or authorized agent must have executed a written instrument of transfer of such Interest in the form and substance satisfactory to the Members approving the transaction;

(b) the transferee must have executed a written agreement, in form and substance satisfactory to the Members approving the transaction, to assume all of the duties and obligations of the transferor under this Company Agreement with respect to the transferred Interest and to be bound by and subject to all of the terms and conditions of this Company Agreement;

(c) the transferor, his, her, or its legal representative or authorized agent, and the transferee must have executed a written agreement, in form and substance satisfactory to the Members approving this transaction to indemnify and hold the Company, the Managers and the other Members harmless from and against any loss or liability arising out of the transfer;

(d) the transferee must have executed such other documents and instruments as the Members approving the transaction may deem necessary to effect the admission of the transferee as a Member; and

(e) unless waived by the Managers approving the transaction, the transferee or the transferor must have paid the expenses incurred by the Company in connection with the admission of the transferee to the Company including but not limited to obtaining a legal opinion that the transfer will not in any way violate the Company Agreement, the Loan Agreement, or securities regulations, if applicable.

**Section 12.4 Option Rights.**

(a) Option Events. Upon the occurrence of any one of the following situations (hereinafter individually referred to as an “Option Event”), the Interest of the Member who suffers or causes an Option Event (“Leaving Member”) shall be subject to the option to purchase set forth in this Section.

(i) Death. Upon the death of a Member.

(ii) Disability. Upon the Disability of a Member. As used herein, “disability” shall mean any illness or condition which causes a Member to be unable to perform his duties in the manner in which such duties were previously performed by such Member for a continuous period of ninety (90) days or more, the same being determined by a doctor licensed to practice medicine in the state of such Member’s residence.

(iii) Insolvency. Upon the Insolvency of a Member. As used herein, “Insolvency

of a Member” shall mean that the Member filed a voluntary petition or had an involuntary petition filed against him under any federal or state bankruptcy or insolvency act or law, or in the event a receiver or trustee is appointed as custodian of such Member’s property, or such Member has failed to pay any judgment against him at least ten (10) days prior to the date on which any of his assets may be lawfully sold to satisfy such judgment, or such Member shall suffer an attachment, sequestration or garnishment to be levied against the assets of such Member.

(iv) Divorce. If, in connection with the dissolution of the marriage of any married Member, the Member enters into a property settlement agreement or any court issues an interlocutory decree or other order, the terms of which transfer or award all or part of the Interest of the Member in the Company to the Member’s spouse, whether as a confirmation or a disposition of the spouse’s property rights or otherwise.

(v) Voluntary Withdrawal as Member/Manager. Upon a Member’s voluntary withdrawal as a Member or Manager of the Company.

(vi) Failure to Perform Obligations. Upon a Member’s failure to perform any of its obligations under this Agreement, either as a Member or Manager, and the same has not been cured or cure has not been commenced within ten (10) days from the date of notice of such breach has been delivered to the Member by the other Member.

(vii) Attempted Transfer of Interest. If any Member attempts to transfer his Interest in the Company not in accordance with the terms of this Article.

**Section 12.5 Purchase Price/Company Valuation.** In the event of the death or incapacity of an individual Member or in the event of the involuntary merger, consolidation, dissolution or liquidation of any Member that is not an individual, all of such Member’s rights hereunder, including such Member’s Interest, shall, subject to the remaining provisions of this Article 12, pass to such Member’s personal representative, heir or distributee, in the case of an individual Member, or to such Member’s legal successor, in the case of any Member not an individual. Upon and contemporaneously with any such transfer of a Member’s Interest by operation of law, the Company shall purchase from the transferee of such Interest, and the transferee shall sell to the Company for a purchase price of \$1 for each percentage of the Interest transferred, all rights and interests of the transferee in the Company, except for the right to its capital return, if any, along with any share of the Company’s distributions and allocations when and if distributed. However, all rights incident to the transferee’s right, if any, to vote and participate in the membership or management of the Company, shall be transferred except those rights that cannot be waived by an assignee of an economic interest in the Company pursuant to the Act.

**Section 12.6 Failure to deliver Voting Rights/Membership Interest.** If a Member or other Person, including but not limited to the heir, administrator, estate, representative, custodian, trustee, or spouse of Leaving Member, becomes obligated to sell, transfer or assign any Membership Interest to the Company or the Other Members under this Company Agreement (the “Obligated Person”) and fails to deliver such Membership Interest or return of certificated interest, if applicable, in accordance with the terms of this Company Agreement, the Company or such Other Members may, in addition to all other remedies it or they may have, tender to the Obligated Person, at the address set forth herein or such place as Obligated Person may be located, the Purchase Price for such Membership Interest as is herein specified and then transfer such Membership Interest on the books and records of the Company to the person entitled hereunder to receive the Membership Interest.

## **ARTICLE 12. ISSUANCE OF ADDITIONAL MEMBERSHIP INTERESTS**

Any Person approved by all of the Managers may become a Member in the Company by the issuance by the Company of Membership Interests for such consideration as the Managers shall unanimously determine. The Managers shall determine at the time of such issuance of Membership Interests the Ownership Percentage of such newly admitted Member (with the Ownership Percentages of the then-existing Members

being decreased respectively.). The determination by the Managers to admit additional Members may dilute the interests of Class A Members by percentage of ownership interest or proportionate units of interest.

## **ARTICLE 13. DISSOLUTION AND TERMINATION**

### **Section 13.1 Dissolution.**

- (a) The Company shall be dissolved upon the occurrence of any of the following events:
  - (i) by the Majority Vote of the Members and the Managers; or
  - (ii) the sale of all or substantially all of the Company's assets and the collection of all proceeds therefrom.
- (b) A Member shall not voluntarily withdraw from the Company or take any other voluntary action which causes an Event of Dissociation.
- (c) Unless otherwise approved by a Majority Vote of the Managers, a Member who suffers or incurs an Event of Dissociation or whose status as a Member is otherwise terminated (a "Withdrawing Member"), regardless of whether such termination was the result of a voluntary act by such Withdrawing Member, shall not be entitled to receive the fair value of his Membership Interest, and such Withdrawing Member shall lose all of his right to vote on any of the matters designated to the Members herein, and such Withdrawing Member shall also lose any and all rights to participate in the business and affairs of the Company (for which Members have been designated pursuant hereto). The Withdrawing Member in this case shall own only an Economic Interest in the Company.
- (d) Damages for breach shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the Withdrawing Member would otherwise be entitled.

**Section 13.2 Effect of Dissolution.** Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Texas Revised Limited Liability Company Act.

### **Section 13.3 Winding-Up, Liquidation and Distribution of Assets.**

- (a) Upon dissolution, an accounting shall be made by the Company's accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Manager(s), or if none, the Persons or Persons selected by Majority Vote of the Members (the "Liquidators") shall immediately proceed to wind up the affairs of the Company.
- (b) If the Company is dissolved and its affairs are to be wound up, the Liquidators shall:
  - (i) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Liquidators may determine to distribute any assets to the Members in kind);
  - (ii) Allocate any profit or loss resulting from such sales to the Members in accordance with the terms herein;
  - (iii) Discharge all liabilities of the Company, including liabilities to Members and Managers who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such Reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company;

(iii) Distribute the remaining assets to the Members, either in cash or in kind, in accordance with the positive balance (if any) in each Member's Capital Account (as determined after taking into account all Capital Account adjustments for the Company's Fiscal Year during which the liquidation occurs), with any balance in excess thereof being distributed in proportion to the Members' respective Ownership Percentages. Any such distributions in respect to Capital Accounts shall, to the extent practicable, be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations; and

(iv) If any assets of the Company are to be distributed in kind, the net fair market value of such assets shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of this Company Agreement to reflect such deemed sale.

(c) Notwithstanding anything to the contrary in this Company Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Member's Capital Account.

(d) Upon completion of the winding-up, liquidation and distribution of the assets, the Company shall be deemed terminated.

**Section 13.4 Certificate of Termination.** When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets have been distributed to the Members, a certificate evidencing such termination may be executed and filed with the Secretary of State of Texas in accordance with the Texas Revised Limited Liability Company Act.

**Section 13.5 Return of Contribution Nonrecourse to Other Members.** Except as provided by law or as expressly provided in this Company Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Account of one or more Members, including, without limitation, all or any part of that Capital Account attributable to Capital Contributions, then such Member or Members shall have no recourse against any other Member or Manager.

## **ARTICLE 14. INVESTMENTS REPRESENTATIONS; PRIVATE OFFERING EXEMPTION**

Each Member, by such Member's execution of this Agreement, hereby represents and warrants to, and agrees with, the Manager, the other Members and the Company as follows:

**Section 15.1 Investment Intent.** The Member, in signing below, is acquiring the Interest for investment purposes for such Member's personal account and for that of the accredited person(s) disclosed as a part of the subscription and questionnaire set forth in the Offering Documents and not as a broker, dealer, or with a view to or for sale in connection with any distribution of all or any part of the Interest.

**Section 15.2 Economic Risk.** The Member, in signing below, is financially able to bear the economic risk of such Member's investment in the Company, including the total loss thereof of any returns, capital contributions, or as a result of any dilution which can and may occur.

**Section 15.4 No Registration of Units.** The Member, in signing below, acknowledges that the Interests

have not been registered under the Securities Act of 1933, as amended (the “Securities Act”), or qualified under any state securities law or under the laws of any other jurisdiction, in reliance, in part, on such Member’s representations, warranties and agreements herein.

**Section 15.5 No Obligation to Register.** The Member, in signing below, represents, warrants and agrees that the Company and the Manager is under no obligation to register or qualify the Interests under the Securities Act or under any state securities law or under the laws of any other jurisdiction, or to assist such Member in complying with any exemption from registration and qualification.

**Section 15.6 No Disposition in Violation of Law.** Without limiting the representations set forth above, and without limiting the relevant sections of this Agreement, the Member agrees, in signing below, that he/she/they/it will not make any disposition of all or any part of the Interests which will result in the violation by such Member or by the Company of the Securities Act or any other applicable securities laws.

**Section 15.7 Financial Estimates and Projections.** The Member agrees, in signing below, that he/she/they/it understands that all projections and financial or other materials which it may have been furnished are not based on historical operating results, because no reliable results exist, and are based only upon estimates and assumptions which are subject to future conditions and events which are unpredictable and which may not be relied upon in making an investment decision.

**Section 14.8 Compliance with Regulations.** The provisions of this Agreement are intended to comply with, and in some cases are required by, Code Section 704(b) and 704(c) and the regulations thereunder. Some of the language in this Agreement is taken directly from or is based on such Regulations. These provisions are intended to be interpreted in such a manner as to comply with such Regulations. The Managers may make any modification to the manner in which the Capital Accounts are computed that the Managers determine is appropriate in order to comply with such Regulations, provided that such modification is not likely to have a material effect on the amount intended to be distributable to any Member upon the dissolution of the Company. The Managers may also make any modification the Managers deem appropriate to comply with such Regulations if unanticipated events might otherwise cause this Agreement to not comply with such Regulations.

## ARTICLE 16. MISCELLANEOUS

**Section 16.1 Application of Texas Law.** This Company Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the Texas Business Organizations Code.

**Section 16.2 No Action for Partition.** No Member has any right to maintain any action for partition with respect to the property of the Company.

**Section 16.3 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**Section 16.4 Construction.** Whenever the singular number is used in this Company Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**Section 16.5 Headings.** The headings in this Company Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Company Agreement or any provision hereof.

**Section 16.6 Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Company Agreement shall not prevent a subsequent act,

which would have originally constituted a violation, from having the effect of an original violation.

**Section 16.7 Rights and Remedies Cumulative.** The rights and remedies provided by this Company Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**Section 16.8 Exhibits.** All exhibits referred to in this Company Agreement and attached hereto are incorporated herein by this reference.

**Section 16.9 Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Company Agreement, their respective heirs, legal representatives, successors and assigns.

**Section 16.10 Creditors.** None of the provisions of this Company Agreement shall be for the benefit of or enforceable by any creditors of the Company or by any Person not a party hereto.

**Section 16.11 Counterparts.** This Company Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**Section 16.12 Notices.** Any and all notices, offers, demands or elections required or permitted to be made under this Company Agreement ("Notices") shall be in writing, signed by the party giving such Notice, and shall be deemed given and effective (i) when hand-delivered (either in person or by commercial courier), or (ii) on the third (3rd) business day (which term means a day when the United States Postal Service, or its legal successor ("Postal Service") is making regular deliveries of mail on all of its regularly appointed week-day rounds in the state where the property is located) following the day (as evidenced by proof of mailing) upon which such notice is deposited, postage pre-paid, certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party's respective address as set forth on Exhibit "A," or at such other address as the other party may hereafter designate by Notice.

**Section 16.13 Certificate of Non-Foreign Status.** In order to comply with § 1445 of the Code and the applicable Treasury Regulations thereunder, in the event of the disposition by the Company of a United States real property interest as defined in the Code and Treasury Regulations, each Member shall provide to the Company a certification stating, under penalties of perjury, (i) the Member's address, (ii) United States taxpayer identification number, and (iii) that the Member is not a foreign person as that term is defined in the Code and Treasury Regulations. Failure by any Member to provide such certification by the date of such disposition shall require the Managers to withhold fifteen percent (15%) of each such Member's distributive share of the amount realized by the Company on the disposition, or such other percentage as may be required by applicable law.

**Section 16.14 Amendments.** Any amendment to this Company Agreement shall be made in writing and must be approved by the Majority Vote of the Managers.

**Section 16.15 Invalidity.** The invalidity or unenforceability of any particular provision of this Company Agreement shall not affect the other provisions hereof, and the Company Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. If any particular provision herein is construed to be in conflict with the provisions of the Texas Business Organizations Code, the provisions of this Company Agreement shall control to the fullest extent permitted by applicable law. Any provision found to be invalid or unenforceable shall not affect or invalidate the other provisions hereof, and this Company Agreement shall be construed in all respects as if such conflicting provision were omitted.

**Section 16.16 Arbitration.** Any dispute, controversy or claim arising out of or in connection with, or relating

to, this Company Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the State of Texas, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fees, except that in the discretion of the arbitrator, any award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.

**Section 16.17 Determination of Matters Not Provided for in This Company Agreement.** The Managers shall decide any and all questions arising with respect to the Company and this Company Agreement which are not specifically or expressly provided for in this Company Agreement, except for matters that require Member approval under this Agreement or the Texas Business Organizations Code.

**Section 16.18 Further Assurances.** The Members each agree to cooperate, and to execute and deliver in a timely fashion any and all additional documents necessary to effectuate the purposes of the Company and this Company Agreement.

**Section 16.19 No Partnership Intended for Non-Tax Purposes.** The Members have formed the Company under the Texas Business Organizations Code, Title 3 (governing limited liability companies), and expressly disavow any intention to form a partnership under the Texas Business Organizations Code provisions governing partnerships or limited partnerships, or the partnership act or laws of any other state. The Members do not intend to be partners one to another or partners as to any third party except for tax purposes. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

**Section 16.20 Time.** Time is of the essence of this Company Agreement, and to any payments, allocations and distributions provided for under this Company Agreement.

**Section 16.21 Counsel.** This Agreement has been prepared by Cooper Legal Firm PC (the "Law Firm"), counsel for the Company and the Manager in the course of its representation as syndication and acquisition counsel, and:

- i. The Members and Managers have been advised by the Law Firm that a conflict of interest exists among the Members' and Managers' individual interests; and
- ii. The Members and Managers have been advised by the Law Firm to seek the advice of independent counsel as to their independent rights, responsibilities, and roles; and
- iii. The Members and Managers have been represented by independent counsel or have had the opportunity to seek such representation; and
- iv. The Law Firm has not given any advice or made any representations to the Members or Managers with respect to the tax consequences of this Agreement; and
- v. The Members and Managers have been advised that the terms and provisions of this Agreement may have tax consequences and the Members and Managers have been advised by the Law Firm to seek independent tax advice, accounting advice, and/or counsel with respect thereto; and

- vi. The Members and Managers have been represented by independent counsel or have had the opportunity to seek such representation with respect to the tax consequences of this Agreement.

**Section 16.22 Waiver.** To the fullest extent permitted by law, all Members, and any additional member admitted to the Company and Manager hereby irrevocably waive any right or power that such Person might have to cause the Company 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 Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the division, dissolution, liquidation, winding up or termination of the Company. The Members shall not have any interest in any specific assets of the Company, and a Member shall not have the status of a creditor with respect to any distribution pursuant to this Agreement. The interest of a Member in the Company is personal property.

**IN WITNESS WHEREOF**, the undersigned have set their hands and seals as of the date and year set forth on the first page herein.

[SIGNATURE PAGES FOLLOW]

**[SIGNATURE PAGE FOR INDIVIDUALS OR JOINT PURCHASERS ONLY]**

**IN WITNESS WHEREOF, the Company's Member hereby executes this Company Agreement as of the date first above written.**

**CLASS A MEMBER**

**Signature**

---

**Name**

---

**Joint Purchaser, if any**

**Signature**

---

**Name**

---

**[SIGNATURE PAGE FOR ENTITIES ONLY]**

**IN WITNESS WHEREOF, the Company's Member hereby executes this Company Agreement as of the date first above written.**

**CLASS A MEMBER**

**Entity Name**

---

**Signature**

---

**Manager Name**

---

**[SIGNATURE PAGE FOR MANAGER(S) ONLY]**

**IN WITNESS WHEREOF, the Company's Manager(s) hereby execute this Company Agreement as of the date first above written.**

Manager

Winwood Club Equity Partners Manager, LLC

By: Falcon Capital Management, LLC  
a Wyoming limited liability company  
Its: Co-Manager

---

Sharif Shakhshir, Manager

By: Arjav Investments, LLC  
a Georgia limited liability company  
Its: Co-Manager

---

Dipen Patel, Manager

By: Magnolia Road, LLC  
a Wyoming limited liability company  
Its: Co-Manager

---

Brett Davenport, Co-Manager

---

Meaghan Davenport, Co-Manager

By: Platinum 24, LLC  
a Texas limited liability company  
Its: Co-Manager

---

Eric Chadderdon, Manager

[SIGNATURE PAGE FOR CLASS B MEMBERS ONLY]

**IN WITNESS WHEREOF, the Company's Class B Members hereby execute this Company Agreement as of the date first above written.**

Class B Members

Falcon Capital Management, LLC  
a Wyoming limited liability company

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Sharif Shakhshir, Manager

Arjav Investments, LLC  
a Georgia limited liability company

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Dipen Patel, Manager

Magnolia Road, LLC  
a Wyoming limited liability company

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Brett Davenport, Manager

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Meaghan Davenport, Manager

Platinum 24, LLC  
a Texas limited liability company

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Eric Chadderdon, Manager

Sandhill Asset Management, LLC  
a Kansas limited liability company

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Christie Oldham, Manager

# EXHIBIT "A"

[FORM OF EXHIBIT]

## CLASS A MEMBERS

NAME	CAPITAL CONTRIBUTION	ADDRESS	CLASS A PERCENTAGE OF OWNERSHIP
			%

## CLASS B MEMBERS

NAME	CAPITAL CONTRIBUTION	ADDRESS	CLASS B PERCENTAGE OF OWNERSHIP
Falcon Capital Management, LLC	SERVICES	416 North Bushnell, C Alhambra, CA 91801	28%
Arjav Investments, LLC	SERVICES	1620 Flinthaven Ct Lawrenceville, GA 30043	42%
Magnolia Road, LLC	SERVICES	18640 FM 1488 Rd Ste A251 Magnolia, TX 77354	16.67%
Platinum 24 LLC	SERVICES	17350 State Highway 249 Ste 220 Houston, TX 77064	8.33%
Sandhill Asset Management, LLC	SERVICES	307 Walnut St Spearville, KS 67876-8569	5%

## MANAGER

Winwood Club Equity Partners Manager, LLC