

EXHIBIT 7
RECEIVER'S, CRO'S AND DEBTOR'S
SECOND AMENDED PLAN OF REORGANIZATION (MAY 27, 2010)

ROLLOVER MEMBER LLC AGREEMENT

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
SUNWEST ROLLOVER MEMBER LLC

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AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
SUNWEST ROLLOVER MEMBER LLC

This Limited Liability Company Agreement, effective as of July [___], 2010, is entered into by and among Michael A. Grassmueck, in his capacity as Receiver for Debtor and the Receivership Entities, as the Initial Manager and those parties listed on Exhibit B, as the Preferred and Common Members and Jon M. Harder (“Harder”), Darryl E. Fisher (“Fisher”) and Wallace Gutzler (“Gutzler”), collectively, as the Special Members, pursuant to the Act on the following terms and conditions.

WHEREAS, the Initial Member is a party to that certain Limited Liability Company Agreement, dated as of May [___], 2010 (the “Original LLC Agreement”);

WHEREAS, the Initial Member appointed Michael A. Grassmueck, in his capacity as Receiver for Debtor and the Receivership Entities, as the Initial Manager of the Company; and

WHEREAS, the Initial Member and the Initial Manager desire to amend and restate the Original LLC Agreement.

NOW, THEREFORE, the Original LLC Agreement is hereby amended and restated in its entirety on the following terms and conditions:

1. Organization.

1.1 Formation. On May 14, 2010, a Certificate of Formation was filed in the office of the Secretary of State of Delaware in accordance with and pursuant to the Act.

1.2 Name and Place of Business. The name of the Company shall be Sunwest Rollover Member LLC, and its principal place of business shall be 20 SW Jefferson Street, Suite 300, Portland, Oregon 97201. The Board of Managers may change such name, change such place of business or establish additional places of business of the Company as the Board of Managers may determine to be necessary or desirable.

1.3 Business and Purpose of the Company. The primary purpose of the Company is to (i) acquire, hold and own the Blackstone Interest, and to that end hold, pledge and dispose of the Blackstone Interest and (ii) engage in any other activities relating to or incidental as are necessary to accomplish such purpose.

1.4 Term. The term of the Company shall commence on the effective date of this Agreement and shall terminate on December 31, 2020, unless the Company is sooner dissolved and terminated as provided in this Agreement.

1.5 Required Filings. The Board of Managers shall execute, acknowledge, file, record and/or publish such certificates and documents, as may be required by this Agreement or by law in connection with the formation and operation of the Company.

1.6 Registered Office and Registered Agent. The Company’s initial registered office and initial registered agent shall be as provided in the Certificate of Formation. The registered office and registered agent may be changed from time to time by the Board of Managers by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.7 Certain Transactions. Any Manager, Member, Economic Interest Owner, or any Affiliate thereof, or any shareholder, officer, director, employee, partner, member, manager or any person owning an interest therein, may engage in or possess an interest in any other business or venture of any nature or description, whether or not competitive with the Company, including, but not limited to, the acquisition, syndication, ownership, financing,

leasing, operation, maintenance, management, brokerage, construction and development of property similar to that held by the Company or the Blackstone Entity and no Manager, Member or other person or entity shall have any interest in such other business or venture by reason of their interest in the Company.

2. Definitions. Definitions for this Agreement are set forth on Exhibit A and are incorporated herein.

3. Capitalization and Financing.

3.1 Managers' Capital Contributions. The Managers shall not be required to make any Capital Contributions to the Company.

3.2 Members' Capital Contributions.

3.2.1 Initial Member. The Initial Member made a capital contribution of \$100,000 in cash to the Company pursuant to the Original LLC Agreement. On the first business day following the admission of Members pursuant to this Agreement, the Initial Member's \$100,000 Capital Contribution will be returned, and the Initial Member shall cease to be a Member. The Members hereby consent to the Initial Member's withdrawal of the Initial Member's Capital Contribution and waive any right, claim or action they may have against the Initial Member by reason of the Initial Member having been a Member.

3.2.2 Common Units. The Company is hereby authorized to issue the Common Units in the amounts, in exchange for the Property, subject to the indebtedness and to the persons set forth on Exhibit B. The initial number of Common Units is set forth on Exhibit B. Each Common Unit shall have an initial Capital Account Book Value of \$100 per Common Unit. The Members acknowledge and agree that all of the information required to complete Exhibit B will not be available as of the date of this Agreement and the Initial Manager has the power and authority to prepare, adopt and amend Exhibit B to reflect the contributions and other transactions contemplated by this Agreement.

3.2.3 Preferred Units. The Company is hereby authorized to issue the Preferred Units in the amounts, in exchange for the Property, subject to the indebtedness and to the persons set forth on Exhibit B. The initial number of Preferred Units is set forth on Exhibit B. Each Preferred Unit shall have an initial Capital Account Book Value of \$100 per Preferred Unit.

3.2.4 Special Units. The Company is hereby authorized to issue the Special Units in the amounts, in exchange for the Property, subject to the indebtedness and to the Special Members as set forth on Exhibit B. Each Special Unit shall have an initial Capital Account Book Value of \$100 per Special Unit.

3.2.5 Adjustment of Units. Upon execution or assumption of this Agreement, each of the Persons listed on Exhibit B shall become Members of the Company. The issuance of the Units is pursuant to the Bankruptcy Case. As a result of the administrative requirements that must be completed in the Bankruptcy Case, the number of Units to be issued to the Common Members and the Preferred Members cannot be calculated until after the contribution of the Property by the Common Members and Preferred Members. As a result, each Common Member's and Preferred Member's Units shall be determined after the Closing. The number of Units to be issued to each Member shall be determined by the Initial Manager, retroactive to the effective date of this Agreement. The issuance of the Units shall be made by the Initial Manager on or prior to December 31, 2010. The Initial Manager shall have the sole responsibility and authority to issue the Common Members' and Preferred Members' Units and the Board of Managers that is elected after the termination of the Initial Manager as the Manager shall not be permitted to make any such determinations. All decisions regarding the issuance of Units shall be determined in the Initial Manager's sole and absolute discretion consistent with the Bankruptcy Case and consistent with the "Common Interests" and "Class A Preferred Units" in the Blackstone Entity.

3.2.6 Employee Benefits Plan. The Company will not issue 25% or more of any class of Units to Employee Benefit Plans.

3.2.7 Managers or Their Affiliates as Members. Any Manager and/or its Affiliates may hold Units. In such event, the Manager or its Affiliates will be admitted to the Company as Members with respect to such Units and will be entitled to all rights as Members appurtenant thereto, including but not limited to the right to vote on certain Company matters as provided for in this Agreement and to receive Distributions and allocations attributable to the Units acquired.

3.2.8 Admission of Members. To the extent required by law, the Board of Managers shall amend this Agreement and take such other action as the Board of Managers deems necessary or appropriate promptly after receipt of the Members' Capital Contributions to the Company to reflect the admission of those persons to the Company as Members.

3.2.9 Liabilities of Members. Except as specifically provided in this Agreement, the Managers and the Members shall not be required to make any additional contributions to the Company and no Manager or Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company, by reason of being a Member or Manager of the Company, nor shall the Managers or the Members be required to lend any funds to the Company or to repay to the Company, any Member, or any creditor of the Company any portion or all of any deficit balance in a Member's Capital Account.

3.3 Company Loans. The Company may obtain, in the sole discretion of the Board of Managers, loans for the benefit of the Company.

3.4 Issuances of Additional Units. The Board of Managers is hereby authorized to cause the Company to issue additional Common Units or Preferred Units or issue any other security in the Company (the "Additional Interests") at any time or from time to time, to the Members or to other Persons for such consideration and on such terms and conditions as shall be established by the Board of Managers in the Board of Managers' sole and absolute discretion, all without the approval of any Member; provided, however, that, subject to Section 3.5, additional Common Units or Preferred Units or any other securities in the Company shall only be issued for the purposes of paying the Company's operating expenses and shall not be used to acquire any other investment assets or Property. Any Additional Interests issued hereby may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties, including rights, powers and duties senior to any other Units, all as shall be determined by the Board of Managers in its sole and absolute discretion and without the approval of any Member, subject to Delaware law, including, without limitation, (A) the allocations of items of Company income, gain, loss, deduction and credit to each such class or series of Units issued; (B) the right of each such class or series of Units to share in Company Distributions; and (C) the rights of each such class or series of Units upon dissolution and liquidation of the Company. In the event that any Additional Interests are issued, the Board of Managers shall have all power and authority to amend this Agreement to reflect the changes applicable to such issuance including but not limited to changes that adjust the Book Value of the existing Capital Accounts and amending the allocations and Distributions to reflect the issuance of the newly issued Additional Interests. No Additional Interest may be offered or sold to any individual, entity or other person that does not meet all qualifications under all applicable federal, state and local securities laws, rules and regulations in order for such offer and sale to qualify as exempt from all federal, state and local registration requirements; or if such offer or sale would otherwise violate the terms of this Agreement.

3.5 Blackstone Entity Capital Call.

3.5.1 Notwithstanding Section 3.4, in the event that a capital contribution is requested pursuant to Section 3.5 of the Blackstone Agreement (a "Blackstone Capital Call"), the Company shall provide written notice ("Blackstone Call Notice") to each Common Member and each Preferred Member specifying the total amount of additional capital required and each Common Member's requested capital contribution (the "Blackstone Required Capital"). Within 10 calendar days of receipt of the Blackstone Call Notice, each Common Member must indicate, in writing, (i) if such Common Member will purchase the full amount of their pro rata portion of the Blackstone Required Capital and (ii) if such Common Member desires to provide additional capital, and acquire additional Common Units, in the event that some of the Common Members do not make their pro rata contributions and the amount of additional capital that such Common Member is willing to make. Within 10 calendar days of receipt of the Blackstone Call Notice, each Preferred Member must indicate, in writing, if such Preferred Member desires to provide additional capital, and acquire Common Units, in the event that the Common Members, in the aggregate, do

not contribute the total amount of the Blackstone Required Capital. Any agreements to contribute additional capital shall be binding on the Member who elects to make a capital contribution (each, an "Electing Member"). Within 3 business days of the end of the 10-day period referenced above, the Company shall notify each Member as to the amount of its additional capital contribution to be made pursuant to this Section 3.5.1 (the "Blackstone Contribution Notice"). Each Member shall have 5 business days to contribute the amount set forth in the Blackstone Contribution Notice. In the event that any Member fails to contribute all of its portion of the Blackstone Required Capital pursuant to the Blackstone Contribution Notice within such 5 business days, the Company may allow other Electing Members who did not have the opportunity to make an additional capital contribution to contribute the portion of the Blackstone Required Capital that is set forth in a notice to such Member (the "Blackstone Second Contribution Notice"). The Members shall have 3 business days to contribute the additional capital pursuant to the Blackstone Second Contribution Notice. The Company shall give a preference to the Common Members when determining the amount of each Member's additional capital contribution pursuant to this Section 3.5.1. No Member shall be required to become an Electing Member and, if a Member does not elect to be an Electing Member, such Member shall not be required to make any capital contribution. The Special Members shall not be entitled to become an Electing Member. The failure of any Member to contribute additional capital to the Company in response to a Blackstone Call Notice shall not be a default by such Member under this Agreement. No Common Units may be offered or sold pursuant to this Section 3.5 to any individual, entity or other person that does not meet all qualifications under all applicable federal, state and local securities laws, rules and regulations in order for such offer and sale to qualify as exempt from all federal, state and local registration requirements; or if such offer or sale would otherwise violate the terms of this Agreement.

3.5.2 The Company shall contribute all of the funds it has received pursuant to Section 3.5.1 (if any) to the Blackstone Entity in satisfaction of the capital contribution called by the Blackstone Entity.

3.5.3 The Company anticipates that it will issue additional Common Units to the Members that make an additional capital contribution pursuant to Section 3.5.1. at a price of \$100 per Common Unit, provided, however that the Board of Managers may, in its sole discretion, specify a different price per Common Unit. In the event that the Board of Managers elects to issue the Common Units at a different price, such different price per Common Unit shall be specified in the Blackstone Call Notice and appropriate adjustments to the Members' Book Value of their Capital Accounts shall be made.

3.6 Right of First Refusal. If the Company issues Additional Interests pursuant to Section 3.4 but not Section 3.5, the Company shall first offer to sell such Additional Interests in the Company to the current Preferred Members and Common Members, on a pro rata basis in proportion to their Units, pursuant to the terms and conditions set forth in this Section 3.6. If the Company desires to sell or otherwise issue additional Units, the Company shall first provide a written offer (the "Offer Notice") to sell such interests in the Company to the Members on the terms and conditions described in the Offer Notice. The Members shall have the right, within 15 calendar days after receipt of such Offer Notice, to accept such offer by providing written notice to the Company of such acceptance including indicating the amount of the Additional Interests the Member desires to purchase (the "Additional Elected Amount"). Failure of a Member to respond to such offer within such 15 day period shall be a deemed rejection of such offer. If a Member rejects (or is deemed to reject) the offer to acquire the Additional Interests in the Company, then the other Members shall be able to purchase the non-purchasing Member's pro rata portion of the Additional Interests on a pro rata basis based on their Units and in accordance with their Additional Elected Amount. No Additional Interest may be offered or sold to any individual, entity or other person that does not meet all qualifications under all applicable federal, state and local securities laws, rules and regulations in order for such offer and sale to qualify as exempt from all federal, state and local registration requirements; or if such offer or sale would otherwise violate the terms of this Agreement. If less than all of the new interests in the Company are purchased by the Members pursuant to the Offer Notice, the Company shall be able to sell the Additional Interests in the Company to third parties on the same terms and conditions as set forth in the Offer Notice, within 180 days after the rejection (or deemed rejection) of the offer by the Members. If such transfer is not completed within such 180 day period, the Company must again provide the Members with the right of first refusal granted hereunder if the Company wishes to sell or otherwise issue additional interests in the Company.

3.7 Capital Contribution to Blackstone Entity. All of the Property set forth on Exhibit B shall immediately be contributed to the Blackstone Entity. The Members agree that some or all of the Property will, as an administrative convenience only, be directly deeded to the Blackstone Entity by the applicable Member. However,

notwithstanding the above, the Members agree that the Property will be treated as if it were contributed to the Company and the Company contributed such Property to the Blackstone Entity.

4. Allocation of Tax Items.

4.1 Preferred Member Preferred Return. Prior to any allocations of Net Income and Net Loss, the Preferred Members shall be allocated the Preferred Member Preferred Return; provided, however, the Preferred Member Preferred Return shall not be allocated until the Company has been allocated its Preferred Return (as such term is defined on Annex A to the Blackstone Agreement) pursuant to Section D of Annex A of the Blackstone Agreement. The Preferred Return shall be treated as a guaranteed payment under Section 707(c) of the Code.

4.2 Allocation of Net Income and Net Loss. For each fiscal year, the Net Income and Net Loss of the Company shall be allocated as follows:

4.2.1 Net Income. After giving effect to the special allocations set forth in Sections 4.3 and 4.4, Net Income for any fiscal year shall be allocated as follows:

(a) First, 100% to the Preferred Members in proportion to their Preferred Units until the Net Income allocated to the Preferred Members pursuant to this Section 4.2.1(a) for such fiscal year and all previous fiscal years is equal to the aggregate Net Loss allocated to the Preferred Members pursuant to Section 4.2.2(e) for all previous fiscal years;

(b) Second, 100% to the Common Members in proportion to their Common Units until the Net Income allocated to the Common Members pursuant to this Section 4.2.1(b) for such fiscal year and all previous fiscal years is equal to the aggregate Net Loss allocated to the Common Members pursuant to Section 4.2.2(d) for all previous fiscal years;

(c) Third, 100% to the Special Members in proportion to their Special Member Units until the Net Income allocated to the Special Members pursuant to this Section 4.2.1(c) for such fiscal year and all previous fiscal years is equal to the aggregate Net Loss allocated to the Special Member pursuant to Section 4.2.2(c) for all previous fiscal years;

(d) Fourth, prior to the Conversion Event, 100% to the Common Members in proportion to their Common Units; and

(e) Fifth, after the Conversion Event, to the Special Members until the Special Members' cumulative net allocation of Net Income made pursuant to this Section 4.2.1(e) for all fiscal years is equal to the cumulative Distributions made to the Special Members pursuant to Section 5.2.2 and the remainder to the Common Members in proportion to their Common Units.

4.2.2 Net Loss. After giving effect to the special allocations set forth in Sections 4.3 and 4.4, Net Loss for any fiscal year shall be allocated as follows:

(a) First, between the Special Members and the Common Members in proportion to and to the extent of Net Income previously allocated to the Special Members and the Common Members pursuant to Section 4.2.1(e) until the aggregate Net Loss allocated to the Special Members and the Common Members pursuant to this Section 4.2.2(a) for such fiscal year and all previous fiscal years is equal to the aggregate Net Income allocated to the Special Members and the Common Members pursuant to Section 4.2.1(e) for all previous fiscal years;

(b) Second, among the Common Members in proportion to and to the extent of Net Income previously allocated to the Common Members pursuant to Section 4.2.1(d) until the aggregate Net Loss allocated to the Common Members pursuant to this Section 4.2.2(b) for such fiscal year and all previous fiscal years is equal to the aggregate Net Income allocated to the Common Members pursuant to Section 4.2.1(d) for all previous fiscal years;

(c) Third, 100% to the Special Members in proportion to their Special Units until their Net Capital Contributions are reduced to zero;

(d) Fourth, 100% to the Common Members in proportion to their Common Units until their Net Capital Contributions are reduced to zero; and

(e) Fifth, 100% to the Preferred Members in proportion to their Preferred Units until their Net Capital Contributions are reduced to zero.

4.3 Special Allocations.

4.3.1 Qualified Income Offset. Except as provided in Section 4.3.3, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustment, allocation or distribution as quickly as possible.

4.3.2 Gross Income Allocation. Net Loss shall not be allocated to any Member to the extent such allocation would cause such Member to have an Adjusted Capital Account Deficit at the end of a fiscal year. In the event any Member has an Adjusted Capital Account Deficit at the end of any fiscal year, each such Member shall be specially allocated items of Company gross income and gain in the amount of such Adjusted Capital Account Deficit as quickly as possible.

4.3.3 Minimum Gain Chargeback. Notwithstanding any other provision of this Section 4, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section 4.3.3 is intended to comply with the partnership minimum gain chargeback requirement in the Treasury Regulations and shall be interpreted consistently therewith. This provision shall not apply to the extent the Member's share of net decrease in Company Minimum Gain is caused by a guaranty, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced or otherwise changed debt or to the extent the Member contributes cash to the capital of the Company that is used to repay the Nonrecourse Debt, and the Member's share of the net decrease in Company Minimum Gain results from the repayment.

4.3.4 Member Minimum Gain Chargeback. Notwithstanding any other provision of this Section 4, except Section 4.3.3, if there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under Treasury Regulations Section 704-2(i)(5)) as of the beginning of the year shall be allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section shall not apply to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to conversion, refinancing or other change in a debt instrument that causes it to become partially or wholly a Nonrecourse Debt. This Section is intended to comply with the partner minimum gain chargeback requirements in the Treasury Regulations and shall be interpreted consistently therewith and applied with the restrictions attributable thereto.

4.3.5 Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Members in proportion to their Units. A Member's "interest in partnership profits" for purposes of determining its share of the excess nonrecourse liabilities of the Partnership within the meaning of Regulations Section 1.752-3(a)(3) shall be such Member's Percentage Interest; provided, however, with respect to the Units issued for Property, excess nonrecourse liability shall first be allocated to the Members who contributed the applicable Property to the extent of any built-in gain with respect to such Property that it is attributable to such Member pursuant to Section 704(c) to the extent debt attributable to such gain has not previously been allocated to such Member pursuant to Regulations Section 1.752-3(a)(2).

4.3.6 Member Nonrecourse Deductions. Member Nonrecourse Deductions for any fiscal year shall be allocated to the Member who bears the economic risk of loss as set forth in Treasury Regulations Section 1.752-2 with respect to the Member Nonrecourse Debt. If more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, any Member Nonrecourse Deductions attributable to that Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss.

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

4.4 Curative Allocations. Notwithstanding any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

4.5 Contributed Property. Notwithstanding any other provision of this Agreement, the Members shall cause depreciation and/or cost recovery deductions and gain or loss attributable to Property contributed by a Member or revalued by the Company to be allocated among the Members for income tax purposes in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. The Board of Managers shall be entitled to select the appropriate method to account for the variation between the basis of Property and its fair market value at the time of the contribution by a Member.

4.6 Recapture Income. The portion of each Member's distributive share of Net Income that is characterized as ordinary income pursuant to Section 1245 or 1250 of the Code shall be proportionate to the amount of Net Income or Net Loss which included the corresponding depreciation deductions that were allocated to such Member as compared with the amount of depreciation deductions allocated to all Members.

4.7 Allocation Among Units. Except as otherwise provided in this Agreement, all Distributions and allocations made to any class of Members shall be in the ratio of the number of Units of such class held by each such Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month) to the total outstanding Units of such class as of such date, and, except as otherwise provided in this Agreement without regard to the number of days during such month that the Units of such class were held by each Member. Members who acquire Units at different times during the Company tax year shall be allocated Net Income and Net Loss using the monthly convention set forth in Section 4.9. For purposes of this Section 4 and Section 5, an Economic Interest Owner shall be treated as a Member.

4.8 Allocation of Company Items. Except as otherwise provided herein, whenever a proportionate part of Net Income or Net Loss is allocated to a Member, every item of income, gain, loss or deduction entering into the computation of such Net Income or Net Loss, and every item of credit or tax preference related to such allocation and applicable to the period during which such Net Income or Net Loss was realized shall be allocated to the Member in the same proportion.

4.9 Assignment. In the event of the assignment of a Unit, the Net Income and Net Loss shall be apportioned as between the Member and his assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the Units as of the date of the Distribution. An assignee who receives Units during the first 15 days of a month will receive any allocations relative to such month. An assignee who acquires Units on or after the sixteenth day of a month will be treated as acquiring his Units on the first day of the following month.

4.10 Power of the Board of Managers to Vary Allocations. It is the intent of the Members that each Member's share of Net Income and Net Loss be determined and allocated in accordance with Section 704(b) and Section 514(c) of the Code and the provisions of this Agreement shall be so interpreted. Therefore, if the Company is advised by the Company's legal counsel that the allocations provided in this Section 4 are unlikely to be respected for federal income tax purposes, the Board of Managers is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) and Section 514(c) of the Code and effect the plan of allocations and Distributions provided for in this Agreement.

4.11 Consent of Members. The allocation methods of Net Income and Net Loss are hereby expressly consented to by each Member as a condition of becoming a Member.

4.12 Withholding Obligations.

4.12.1 If the Company is required (as determined by the Board of Managers to make a payment ("Tax Payment") with respect to any Member to discharge any legal obligation of the Company or the Board of Managers to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising as a result of such Member's interest in the Company, then, notwithstanding any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Company to such Member, which loan shall bear interest at the Prime Rate and be payable upon demand or by offset to any Distribution which otherwise would be made to such Member.

4.12.2 If and to the extent the Company is required to make any Tax Payment with respect to any Member, or elects to make payment on any loan described in Section 4.12.1 by offset to a Distribution to a Member, either (i) such Member's proportionate share of such Distribution shall be reduced by the amount of such Tax Payment, or (ii) such Member shall pay to the Company prior to such Distribution an amount of cash equal to such Tax Payment. In the event a portion of a Distribution in kind is retained by the Company pursuant to clause (i) above, such retained Property may, in the discretion of the Board of Managers, either (A) be distributed to the other Members, or (B) be sold by the Company to generate the cash necessary to satisfy such Tax Payment. If the Property is sold, then for purposes of income tax allocations only under this Agreement, any gain or loss from such sale or exchange shall be allocated to the Member to whom the Tax Payment relates. If the Property is sold at a gain, and the Company is required to make any Tax Payment on such gain, the Member to whom the gain is allocated shall pay the Company prior to the due date of Tax Payment an amount of cash equal to such Tax Payment.

4.12.3 The Board of Managers shall be entitled to hold back any Distribution to any Member to the extent the Board of Managers believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Board of Managers believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

4.13 Special Allocation. Notwithstanding the other provisions in this Section 4, in the year of the sale of the last projects owned by the Blackstone Entity, Net Income and Net Loss from all sources (or gross income or gross expense) shall be allocated, to the greatest extent possible, so that the positive capital account balance of each Member shall be equal to the Distributions to be made upon liquidation to such Member.

5. Distributions.

5.1 Preferred Member Preferred Return. Prior to any distribution of Cash from Operations as set forth in Section 5.2, the Preferred Members shall be distributed the Preferred Member Preferred Return; provided, however, the Preferred Member Preferred Return shall not be distributed until the Company has been distributed from the Blackstone Entity, the amount set forth in Section 4.1(A) of the Blackstone Agreement. Any Distribution authorized on the Preferred Units shall first be credited against the earliest accumulated but unpaid Preferred Return due with respect to such Distributions that remains payable. Payment of the Preferred Return to the Preferred Members shall be made within 15 days of the receipt by the Company of the amounts described in Section 4.1(A) of the Blackstone Agreement. No interest shall be due nor shall any additional Preferred Return be due to any Preferred Member as long as the Preferred Return is paid within such 15 day period.

5.2 Cash From Operations. Except as otherwise provided in Section 11 and subject to the Board of Managers' discretion pursuant to Section 5.3 and subject to Section 5.5, Cash From Operations with respect to each calendar year shall be distributed as follows:

5.2.1 Prior to the Conversion Event, 100% to the Common Members, in proportion to their Common Units;

5.2.2 After the Conversion Event, a percentage equal to the SM Percentage, to the Special Members, in proportion to their Special Units, and a percentage equal to the CM Percentage, to the Common Members, in proportion to their Common Units; provided, however, that in no event shall the total cumulative Distribution to the Special Members exceed the Special Limitation.

5.3 Restrictions. The Company intends to make periodic Distributions of substantially all cash determined by the Board of Managers to be distributable, subject to the following (i) Distributions, other than the Preferred Return, may be restricted or suspended for periods when the Board of Managers determines in its reasonable discretion that it is in the best interest of the Company and (ii) all Distributions, other than the Preferred Return, are subject to the payment, and the maintenance of reasonable reserves for payment, of Company obligations.

5.4 Liquidation of Preferred Units. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Blackstone Entity, which in turn will result in a liquidation, dissolution or winding-up of the Company, before any distribution or payment shall be made to any Common Members or the Special Members, notwithstanding anything in the Agreement to the contrary, each Preferred Member shall be entitled to receive and be paid out of the assets of the Company legally available for distribution to the Members pursuant to this Agreement an amount equal to the Liquidation Preference for each outstanding Preferred Unit held by such Preferred Member, plus an amount equal to any accumulated and unpaid Distributions with respect to such Preferred Member's Preferred Units. After payment of the full amount of such liquidating Distributions to which they are entitled, the Preferred Members will have no right or claim to any of the remaining assets of the Company, shall cease to be a Preferred Member and the Preferred Units shall be deemed cancelled.

5.5 Priority Tax Distribution.

5.5.1 In the event that the Blackstone Entity sells one or more of the properties contributed by the Company to the Blackstone Entity within four years of the Closing (the "Protected Period") in a Protected Sale, any Member that contributed such Property to the Company will be entitled to receive Distributions within 60 days following such Protected Sale from the distributable cash generated from such sale ("Priority Tax Distribution"), before any other Distributions of cash generated from such sale are made in an amount equal to the Applicable Percentage of its original Capital Account with respect to the contributed Property that was sold.

5.5.2 Priority Tax Distributions made to a Common Member with respect to its Common Units pursuant to Section 5.5.1 shall reduce any subsequent Distributions otherwise payable to such Member pursuant to Section 5.2. Priority Tax Distributions made to a Preferred Member with respect to its Preferred Units pursuant to Section 5.5.1 shall reduce any subsequent Distributions otherwise payable to such Member pursuant to Section 5.4 but shall not reduce Net Capital Contributions for purposes of determining a Preferred Member's Preferred Return.

5.5.3 Notwithstanding the above, no Distributions shall be made pursuant to this Section 5.5, unless the Company has received the distributions from the Blackstone Entity as set forth in Section 4.6 of the Blackstone Agreement. In addition, Section 5.5.1 is subject to the limitations set forth in Section 4.6(B) of the Blackstone Agreement.

5.6 Delay in Distributions. Notwithstanding any other provision of this Section 5, Distributions to the Preferred Members pursuant to Section 5.1 and to the Common Members pursuant to Section 5.2, if any, for calendar year 2010 shall not be made until after determination of the number of Units applicable to the Members has been made and no interest or additional Preferred Return shall be due to the Preferred Members as a result of any delay in payment of the Preferred Return in calendar year 2010.

5.7 Tag-Along and Drag-Along Rights. In the event that the Company elects to exercise its tag-along rights pursuant to Section 10.3 of the Blackstone Agreement or if the drag-along rights of the other members of the Blackstone Entity are exercised against the Company pursuant to Section 10.4 of the Blackstone Agreement and such rights are for the sale of less than the all of the assets of the Blackstone Entity, the Company shall make Distributions to the Common Members and the Preferred Members to the same extent that the Blackstone Entity made distributions with respect to the common interest and to the Class A Preferred Members under the Blackstone Agreement.

6. Compensation to the Managers and their Affiliates.

6.1 Managers' and Affiliates' Compensation. The Managers and their Affiliates shall receive compensation from the Company for services rendered or to be rendered only as set forth on Exhibit C, provided, however, that the compensation for the Initial Manager shall be established by the Court and may be changed only by the Court. Any increase in the compensation of Managers (other than the Initial Manager) shall require a Member Vote. No agreement may be entered into with an Affiliate of a Manager without the approval of both of the other Managers.

6.2 Company Expenses.

6.2.1 Operating Expenses. Subject to the limitations set forth in Section 6.2.2, the Company shall pay all of the costs and expenses of the Company's operations, including, without limitation, the following costs and expenses: (i) all costs of personnel employed by the Company; (ii) all compensation due to the Managers; (iii) all costs of borrowed money and taxes applicable to the Company; (iv) legal, accounting, audit, brokerage, and other fees; (v) fees and expenses paid to independent contractors, mortgage bankers and other agents; (vi) costs of acquiring, owning and disposing of Property; (vii) all expenses incurred in connection with the maintenance of Company books and records, the preparation and dissemination of reports, tax returns or other information to the Members and the making of Distributions to the Members; (viii) expenses incurred in preparing and filing reports or other information with appropriate regulatory agencies; (ix) expenses of insurance as required in connection with the business of the Company; (x) costs incurred in connection with any litigation in which the Company may become involved, or any examination, investigation, or other proceedings conducted by any regulatory agency, including legal and accounting fees; (xi) the actual costs of goods and materials used by or for the Company; (xii) expenses of Company administration, accounting, documentation and reporting; (xiii) expenses of revising, amending, modifying, or terminating this Agreement; and (xiv) all other costs and expenses incurred in connection with the Company's business; exclusive of those set forth in Section 6.2.2.

6.2.2 Overhead of Board of Managers and Members. No Member, Manager nor any Affiliate shall be reimbursed for such Member's, Manager's or Affiliate's overhead expenses incurred in connection with the business of the Company, including, but not limited to rent, depreciation, utilities, capital equipment and other administrative items.

7. Authority, and Responsibilities of the Initial Manager and the Board of Managers.

7.1 Initial Manager. Until the Board of Managers is elected as set forth in Section 7.3, the business and affairs of the Company shall be managed by the Initial Manager. After election of the Board of Managers, the Company will be managed by the newly elected Board of Managers and not the Initial Manager and the Initial Manager shall have no further authority to manage the Company. Except as otherwise set forth in this Agreement, the Board of Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. The Board of Managers may delegate any such power and authority as it shall determine, in its sole and absolute discretion, to officers of the Company. Any approval, consent or action by the Board of Managers shall require the affirmative vote, consent or approval of a majority of the Managers serving on the Board of Managers. The Board of Managers shall designate a Chairman.

7.2 Board of Managers. Beginning at such time as the Board of Managers is elected pursuant to Section 7.3, the Board of Managers shall have three members. Two of the three members of the Board of Managers

must be Independent Managers. The initial 3-member Board of Managers shall hold offices until December 31, 2011 and until their successors are elected and qualified or until their earlier death, resignation or removal. The Board of Managers shall meet at such times and such places as determined by the Chairman. The Chairman may call a Board meeting upon at least two days minimum written notice to each of the Managers. In the event a Board member resigns or withdraws, the Members shall elect any new Board member by Majority Vote. The remaining Managers shall establish a proposed slate of _____ to _____ individuals to replace such Manager within 30 days of such resignation or withdrawal. Any Independent Manager that resigns must be replaced with an Independent Manager unless there are already two Independent Managers serving on the Board of Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office and shall hold office until the expiration of such term and until his successor shall be elected and qualified or until his earlier death, resignation or removal. In no event shall there be less than one Manager. A Manager shall hold office until such Manager's terms is completed and until such Manager's successor is elected and qualified or until such Manager's earlier death, resignation or removal.

7.3 Nomination and Election of the Board of Managers. Prior to November 15, 2010 or such earlier time as is determined in the Initial Manager's sole discretion, the Initial Manager shall nominate not less than 3 nor more than [___] individuals for election to serve on the Board of Managers (each such individual, a "Nominee"); provided, however, that no Person shall be eligible to be nominated to fill the seat of an Independent Manager unless such Person meets the qualification to be an Independent Manager. On or before November 30, 2010, the Initial Manager shall provide a ballot to the Members with the names of the Nominees, separated to designate those Nominees nominated to fill the 2 Independent Manager seats and those nominated to fill the remaining 1 seat. The Members shall have the right to vote for 2 Nominees to fill the 2 Independent Manager seats and 1 Nominee to fill the other seat. In the event of the death or resignation of a Manager, the remaining Managers shall appoint a new Manager (subject to the foregoing restrictions and qualifications) and the appointment of such new Manager shall be subject to approval by a Majority Vote.

7.4 Resignation or Removal of a Manager.

7.4.1 Resignation. Any Manager shall be entitled to resign or withdraw in the Manager's sole and absolute discretion. If the Initial Manager withdraws or resigns, a new Initial Manager shall be appointed by the Court to finish out the original Initial Manager's term.

7.4.2 Removal. A Manager, other than the Initial Manager, may be removed by the Board of Managers as a result of such Manager's willful misconduct, fraud, gross negligence or breach of fiduciary duty.

7.5 Authority of Board of Managers. The Board of Managers shall have all authority, rights and powers conferred by law (subject to Sections 7.6 and Section 8.2, if required) and those required or appropriate to the management of the Company's business, which, by way of illustration but not by way of limitation, shall include the right, authority and power to, or to cause the Company to,:

7.5.1 Take all actions as a member in the Blackstone Entity;

7.5.2 Acquire, hold, sell, exchange and otherwise dispose of Property;

7.5.3 Borrow money, and, if security is required therefor, to pledge or mortgage or subject Property to any security device, to obtain replacements of any security device and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any security device. All of the foregoing shall be on such terms and in such amounts as the Board of Managers, in its sole discretion, deems to be in the best interest of the Company;

7.5.4 Enter into such contracts and agreements as the Board of Managers determines to be reasonably necessary or appropriate in connection with the Company's business and purpose and any contract of insurance that the Board of Managers deems necessary or appropriate for the protection of the Company and the Board of Managers, including errors and omissions insurance, for the conservation of Company assets, or for any purpose convenient or beneficial to the Company;

7.5.5 Employ persons in the operation and management of the business of the Company;

7.5.6 Prepare or cause to be prepared reports, statements, and other relevant information for distribution to the Members;

7.5.7 Open accounts and deposits and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments as the Board of Managers may deem in its discretion to be necessary or desirable;

7.5.8 Make or revoke any of the elections referred to in the Code (the Board of Managers shall have no obligation to make any such elections);

7.5.9 Select as the Company's accounting year a calendar or fiscal year as may be approved by the Internal Revenue Service (the Company initially intends to adopt the calendar year);

7.5.10 Determine the appropriate accounting method or methods to be used by the Company;

7.5.11 In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of the Members by special or general power of attorney or otherwise:

(a) To add to the representations, duties, services or obligations of the Board of Managers for the benefit of the Members;

(b) To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

(c) To amend this Agreement to reflect the addition or substitution of the Members or the reduction of the Capital Accounts upon the return of capital to the Members;

(d) To minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, defining "plan assets" for ERISA purposes;

(e) To reconstitute the Company under the laws of another state if beneficial;

(f) Reflect the issuance of additional Units or interests in the Company pursuant to Section 3.4 or Section 3.5.

(g) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, including the execution, acknowledgment and delivery of any such instrument by the attorney-in-fact for the Board of Managers under a special or limited power of attorney, and to take all such actions in connection therewith as the Board of Managers shall deem necessary or appropriate with the signature of any Manager designated by the Board of Managers; and

7.5.12 Require in any Company contract that the Managers shall not have any personal liability, but that the person or entity contracting with the Company is to look solely to the Company and its assets for satisfaction;

7.5.13 Lease personal property for use by the Company;

7.5.14 Establish reserves from income in such amounts as the Board of Managers may deem appropriate;

7.5.15 Represent the Company and the Members as the “tax matters partner” within the meaning of the Code in discussions with the Internal Revenue Service regarding the tax treatment of items of Company income, loss, deduction or credit, or any other matter reflected in the Company’s returns, and, if deemed in the best interest of the Members, to agree to final Company administrative adjustments or file a petition for a readjustment of the Company items in question with the applicable court;

7.5.16 Offer and sell additional Units or other interests in the Company;

7.5.17 Redeem or repurchase Units on behalf of the Company to the extent interests in the Blackstone Entity are reduced;

7.5.18 Hold an election for a successor Manager before the resignation, removal or dissolution of the Manager;

7.5.19 Initiate legal actions, settle legal actions and defend legal actions on behalf of the Company;

7.5.20 Enter into any transaction with any partnership or venture;

7.5.21 Merge or combine the Company or “roll-up” the Company into a partnership, limited liability company or other entity with a Majority Vote;

7.5.22 Appoint officers of the Company as set forth in Section 7.13;

7.5.23 Make Temporary Investments;

7.5.24 Prepare, adopt and amend Exhibit B to reflect the contributions and other transactions contemplated by this Agreement

7.5.25 Perform any and all other acts which the Board of Managers is obligated to perform hereunder; and

7.5.26 Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and take all such actions in connection therewith as the Board of Managers may deem necessary or appropriate. Any and all documents or instruments may be executed on behalf of and in the name of the Company by the Board of Managers or a Manager or officer designated by the Board of Managers.

7.6 Restrictions on Board of Managers’ Authority. The Board of Managers shall not have the authority, without a Majority Vote, to:

7.6.1 Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of the Company;

7.6.2 Alter the primary purpose of the Company;

7.6.3 Receive from the Company a rebate or give-up or participate in any reciprocal business arrangements which would enable it or any Affiliate to do so;

7.6.4 Sell or lease to the Company any real property in which the Manager or any Affiliate has any interest;

7.6.5 Admit another person or entity as a Manager, except with the consent of the Members as provided in this Agreement;

7.6.6 Reinvest Cash From Operations in additional Property;

7.6.7 Invest the Company's funds in any investment other than in Temporary Investments;

7.6.8 Commingle the Company funds with those of any other person or entity, except for the temporary deposit of funds in a bank checking account for the sole purpose of making Distributions as soon as practicable thereafter to the Members; or

7.6.9 Cause the Company to loan to any Manager or Affiliates Company assets or employ, or permit employment of, the funds or assets of the Company in any manner except for the exclusive benefit of the Company.

7.7 Responsibilities of the Board of Managers. The Board of Managers shall:

7.7.1 Have a fiduciary responsibility for the safekeeping and use of all the funds and assets of the Company;

7.7.2 Devote such of its time and business efforts to the business of the Company as it shall in its discretion, exercised in good faith, determine to be necessary to conduct the business of the Company;

7.7.3 File and publish all certificates, statements, or other instruments required by law for formation, qualification and operation of the Company and for the conduct of its business in all appropriate jurisdictions;

7.7.4 Cause the Company to be protected by insurance determined by the Board of Managers in their discretion to be appropriate to the business of the Company;

7.7.5 At all times use its best efforts to meet applicable requirements for the Company to be taxed as a partnership and not as an association taxable as a corporation; and

7.7.6 Amend this Agreement to reflect the admission of the Members not later than 90 days after the date of admission or substitution.

7.8 Administration of Company. The Board of Managers shall have the responsibility of providing continuing administrative and executive support, advice, consultation, analysis and supervision with respect to the functions of the Company, including decisions regarding the Blackstone Interest and compliance with federal, state and local regulatory requirements and procedures. In this regard, the Board of Managers may retain the services of unaffiliated parties as the Board of Managers may deem appropriate to provide management and financial consultation and advice, and may enter into agreements for the management and operation of Company assets.

7.9 Tax Matters Partner. The Board of Managers shall designate a "tax matters partner" for the Company.

7.10 Indemnification of the Board of Managers and Officers.

7.10.1 Indemnification. The Managers and officers of the Company, in each case when acting in connection with matters pertaining to the Company (each a "Covered Person") shall not be liable to the Company or any other Covered Person or Member for any act or omission performed or omitted in good faith and in a manner such Covered Person reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that such Covered Person's conduct was unlawful; and each Covered Person shall be indemnified and held harmless (to the extent of the Company's assets) as described in this Section 7.10.

7.10.2 Good Faith Safe Harbor. For purposes of any determination of good faith, a Covered Person shall be deemed to have acted in good faith if such Covered Person's action or omission is based upon the records of the Company or upon such information, opinions, reports or statements presented to the Company by any person as to matters the Covered Person reasonably believes are within such other person's professional or expert

competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or income or any other facts pertinent to the existence and amount of assets from which Distributions or redemptions to Members might be properly paid. Without limiting the foregoing, no Covered Person shall have any liability with respect to any valuations performed with respect to the Company, and shall be fully protected in relying in good faith upon the records of the Company and upon information, opinions, reports or statements presented to the Company by any person as to matters which such Covered Person reasonably believes are within such other person's professional or expert competence. The provisions of this Section 7.10.2 shall not be deemed to be exclusive or to limit in any way the other circumstances in which a Covered Person may be deemed to have met the applicable standard of conduct set forth in this Section 7. The knowledge and/or actions, or failure to act, of any Manager, member of the Board of Managers, director, officer, agent or employee of the Company shall not be imputed to a Covered Person for purposes of determining such Covered Person's right to indemnification under this Section 7.

7.10.3 Indemnity in Third-Party Proceedings. The Company shall indemnify each Covered Person in accordance with the provisions of this Section 7.10.3 if such Covered Person is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 7.10.3, each Covered Person shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such Covered Person or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if such Covered Person acted in good faith and in a manner such Covered Person reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that such Covered Person's conduct was unlawful.

7.10.4 Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify each Covered Person in accordance with the provisions of this Section 7.10.4 if such Covered Person is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 7.10.4, each Covered Person shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if such Covered Person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 7.10.4 in respect of any claim, issue or matter as to which such Covered Person shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Covered Person is fairly and reasonably entitled to indemnification.

7.10.5 Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that a Covered Person is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify such Covered Person against all Expenses actually and reasonably incurred by such Covered Person in connection therewith. If such Covered Person is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify such Covered Person against all Expenses actually and reasonably incurred by such Covered Person or on such Covered Person's behalf in connection with each successfully resolved claim, issue or matter. If such Covered Person is not wholly successful in such Proceeding, the Company also shall indemnify such Covered Person against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which such Covered Person was successful. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

7.10.6 Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Section 7, to the fullest extent permitted by applicable law and to the extent that a Covered Person is, by reason of such Covered Person's status as a Manager, director, officer, employee or agent of the Company, a witness in any Proceeding to which such Covered Person is not a party, such Covered Person shall be indemnified against all

Expenses actually and reasonably incurred by such Covered Person or on such Covered Person's behalf in connection therewith.

7.10.7 Additional Indemnification. Notwithstanding any limitation in Sections 7.10.3, 7.10.4, or 7.10.5, the Company shall indemnify a Covered Person to the fullest extent permitted by applicable law if such Covered Person is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such Covered Person in connection with the Proceeding. For purposes of this Section 7.10.7, the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to the fullest extent permitted by the provisions of the Act and the General Corporation Law of the State of Delaware, in each case as amended or replaced after the date of this Agreement, that authorize or contemplate additional indemnification by agreement.

7.10.8 Exclusions. Notwithstanding any provision in this Section 7, the Company shall not be obligated under this Section 7 to make or provide any indemnity in connection with any claim made against a Covered Person:

(a) for which payment has actually been made to or on behalf of such Covered Person under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for (i) an accounting of profits made from the purchase and sale (or sale and purchase) by such Covered Person of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Company by a Covered Person of any bonus or other incentive-based or equity-based compensation or of any profits realized by a Covered Person from the sale of securities of the Company, as required in each case under the Exchange Act; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by a Covered Person, including any Proceeding (or any part of any Proceeding) initiated by a Covered Person against the Company or its Managers, Members, directors, officers, employees or other Covered Persons, unless the Board of Managers authorized the Proceeding (or the applicable part of any Proceeding) prior to its initiation.

7.10.9 Advances of Expenses. Notwithstanding any provision of this Agreement to the contrary, the Company shall advance, to the extent not prohibited by law, the Expenses incurred by a Covered Person in connection with any Proceeding, and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to a Covered Person's ability to repay the Expenses and without regard to a Covered Person's ultimate entitlement to indemnification under the other provisions of this Section 7. Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. A Covered Person shall qualify for advances upon the execution and delivery to the Company of an undertaking reasonably satisfactory to the Company providing that such Covered Person undertakes to repay the advances to the extent that it is ultimately determined that such Covered Person is not entitled to be indemnified by the Company. This Section 7.10.9 shall not apply to any claim made by a Covered Person for which indemnity is excluded pursuant to Section 7.10.8.

7.10.10 Procedure for Notification and Defense of Claim. A Covered Person shall notify the Board of Managers in writing of any matter with respect to which such Covered Person intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by such Covered Person of written notice thereof. The written notification to the Board of Managers shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, a Covered Person shall submit to the Board of Managers a written request, including therein or therewith such documentation and information as is reasonably available to such Covered Person and is reasonably necessary to determine whether and to what extent such Covered Person is entitled to indemnification following the final disposition of such action, suit or proceeding. The omission or delay by a Covered Person to

notify the Board of Managers hereunder will not relieve the Company from any liability which it may have to such Covered Person hereunder except to the extent that the Company is actually prejudiced by such omission or delay, and any delay in so notifying the Board of Managers shall not constitute a waiver by a Covered Person of any rights under this Agreement. The Company will be entitled to participate in the Proceeding at its own expense.

7.10.11 Other Agreements. The indemnification provided by this Section 7 shall be in addition to any other rights to which a Covered Person may be entitled under any agreement, action taken by the Company or the Board or Managers, as a matter of law or equity, or otherwise, both as to an action in the Covered Person's capacity as a Covered Person, and as to an action in another capacity, and shall continue as to a Covered Person who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns, and administrators of each Covered Person.

7.10.12 Insurance. The Board of Managers shall cause the Company to purchase and maintain insurance on behalf of the Covered Persons and/or the Company against any liability asserted against any Covered Person and incurred by any Covered Person in such person's capacity as such or arising out of the Covered Person's status in such capacity, regardless of whether the Company would have the power to indemnify the Covered Person against that liability under this Section 7. In furtherance of the foregoing, the Company shall obtain and maintain directors' and officers' liability insurance with coverage in a face amount determined by the Board of Managers.

7.10.13 Nature of Rights. The rights set forth in Section 7 are contractual in nature and may not be revised as applied to prior actions or omissions of a Covered Person by a subsequent amendment of this Agreement without such Covered Person's prior written approval.

7.11 No Personal Liability for Return of Capital. The Managers shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contribution of any Member or any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from any Member) of the Company.

7.12 Authority as to Third Persons.

7.12.1 No third party dealing with the Company shall be required to investigate the authority of the Board of Managers or secure the approval or confirmation by any Member of any act of the Board of Managers in connection with the Company business. No purchaser of any Property or interest owned by the Company shall be required to determine the right to sell or the authority of the Board of Managers to sign and deliver any instrument of transfer on behalf of the Company, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith.

7.12.2 The Board of Managers or any Manager or officer designated by the Board of Managers shall have full authority to execute on behalf of the Company any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by the Board of Managers or any Manager or officer designated by the Board of Managers, executing on behalf of the Company shall be the only execution necessary to bind the Company thereto. Any officer appointed by resolution of the Board of Managers pursuant to Section 7.13 shall have full authority to execute on behalf of the Company any agreements, contract, conveyances, deeds, mortgages and other instruments, to the extent such authority is delegated by the Board of Managers to such officer, and the execution thereof by such officer, executing on behalf of the Company shall be the only execution necessary to bind the Company thereto. No signature of any Member shall be required.

7.13 Officers of the Company. The Board of Managers, in its sole discretion, may appoint officers of the Company at any time. The officers of the Company, if appointed by resolution of the Board of Managers, may include a president, vice president, chief compliance officer, secretary, and treasurer. The officers shall serve at the pleasure of the Board of Managers. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties as determined and authorized by the Board of Managers. In the event officers are appointed, the provisions of this Section 7.13 shall control. In the event that no officers are appointed, all of the power and authority of the officers shall be vested in the Board of Managers. Any officer may be removed, either with or without cause, by the Board of Managers at any time. Any officer may resign at any time by giving written

notice to the Board of Managers. Any resignation shall take effect on the date of the receipt of such notice or at any later time specified in such notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. Any vacancy occurring in any office of the Company shall be filled by the Board of Managers, as selected in its sole discretion.

7.14 Company Representative. The Initial Manager hereby appoints Ford Elsaesser to be the Company's representative on the Board of Directors (as such term is defined in the Blackstone Agreement) of the Blackstone Entity. Such Company representative may be removed only by the Court, provided, however, that in the event of the resignation, incapacity or death of such Company representative, such Company representative may be replaced by the Board of Managers in its sole discretion.

8. Rights, Authority and Voting of the Preferred Members and the Common Members.

8.1 Members Are Not Agents. Pursuant to Section 7, the management of the Company is vested in the Board of Managers. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company.

8.2 Voting by the Preferred Members and Common Members. Preferred Members and Common Members shall be entitled to cast one vote for each Unit they own and shall vote together as a single class on all matters for which they are entitled to vote. Special Members shall have no voting rights pursuant to this Section 8.2 or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement or as otherwise provided by law, Preferred Members and Common Members (but not Economic Interest Owners) shall have the right to vote only upon the following matters:

8.2.1 Election of a Manager;

8.2.2 Increasing the compensation of the Managers, which shall require a Member Vote;

8.2.3 Election to continue the business of the Company after a Manager ceases to be a Manager when there is no remaining Manager;

8.2.4 Amendment of this Agreement; and

8.2.5 Any merger or combination of the Company or roll-up of the Company.

8.3 Member Vote; Consent of Manager. Except for (i) the Member Vote required pursuant to Section 8.2.2, and (ii) the Majority Votes required pursuant to Sections 7.2, 7.3, 8.2.1, 8.2.3 and 11.3 or as specifically provided in this Agreement which provisions shall only require a Majority Vote, matters upon which the Members may vote shall require a Majority Vote and the consent of the Board of Managers to pass and become effective.

8.4 Meetings of the Members. The Board of Managers may at any time call for a meeting of the Members, or for a vote without a meeting, on matters on which the Members are entitled to vote, and shall call for such a meeting (but not a vote without a meeting) following receipt of a written request therefor of Members holding more than 25 percent of the Units entitled to vote as of the record date. Within 20 days after receipt of such request, the Board of Managers shall notify all Members of record of the record date of the Company meeting.

8.4.1 Notice. Written notice of each meeting shall be given to each Member entitled to vote, either personally or by electronic mail, United States mail or other means of written communication, charges prepaid, addressed to such Member at his address appearing on the books of the Company or given by him to the Company for the purpose of notice or, if no such address appears or is given, at the principal executive office of the Company, or by publication of notice at least once in a newspaper of general circulation in the county in which such office is located. All such notices shall be sent not less than 10, nor more than 60, days before such meeting. The notice shall specify the place, date and hour of the meeting and the general nature of business to be transacted, and no other business shall be transacted at the meeting.

8.4.2 Adjourned Meeting and Notice Thereof. When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

8.4.3 Quorum. The presence in person or by proxy of the persons entitled to vote a majority of the Units 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 Vote or such greater vote as may be required by this Agreement or by law. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the vote of a majority of the Units represented either in person or by proxy, but no other business may be transacted, except as provided above.

8.4.4 Consent of Absentees. The transactions of any meeting of Members, however called and noticed and wherever held, are as valid as though they occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons 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. All waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

8.4.5 Action Without Meeting. Except as otherwise provided in this Agreement, any action which may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all entitled to vote thereon were present and voted. In the event the Members are requested to consent on a matter without a meeting, each Member shall be given not less than 10, nor more than 60, days notice. In the event the Manager or Members representing more than 25% of the Units request a meeting for the purpose of discussing or voting on the matter, the notice of a meeting shall be given in the same manner as required by Section 8.4.1 and no action shall be taken until the meeting is held. Unless delayed as a result of the preceding sentence, any action taken without a meeting will be effective 5 days after the required minimum number of voters have signed the consent; however, the action will be effective immediately if the Board of Managers and Members representing at least 80% of the Units have signed the consent.

8.4.6 Record Dates. For purposes of determining the Members entitled to notice of any meeting or to vote or entitled to receive any Distributions or to exercise any rights in respect of any other lawful matter, the Board of Managers (or Members representing more than 25% of the Units if the meeting is being called at their request) may fix in advance a record date, which is not more than 60 nor less than 10 days prior to the date of the meeting nor more than 60 days prior to any other action. If no record date is fixed:

(a) 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 next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held;

(b) 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 Member signs the written consent;

(c) The record date for determining Members entitled to vote or give consent to action for any other purpose shall be at the close of business on the day on which the Board of Managers adopts the record date, or the 60th day prior to the date of the other action, whichever is later; and

(d) A determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting unless the Board of Managers, or the Members who requested the meeting, fix a new record date for the adjourned meeting, but the Board of Managers, or such

Members, shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

8.4.7 Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Board of Managers. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked as specified or unless it states that it is irrevocable. A proxy which states that it is irrevocable is irrevocable for the period specified therein.

8.4.8 Chairman of Meeting. The Board of Managers may select any person to preside as Chairman of any meeting of the Members, and if such person shall be absent from the meeting, or fail or be unable to preside, the Board of Managers may name any other person in substitution therefor as Chairman. The Chairman of the meeting shall designate a secretary for such meeting, who shall take and keep or cause to be taken and kept minutes of the proceedings thereof. The conduct of all Members' meetings shall at all times be within the discretion of the Chairman of the meeting and shall be conducted under such rules as he may prescribe. The Chairman shall have the right and power to adjourn any meeting at any time, without a vote of the Units present in person or represented by proxy, if the Chairman shall determine such action to be in the best interests of the Company.

8.4.9 Inspectors of Election. In advance of any meeting of Members, the Board of Managers may appoint any persons other than Nominees for the Board of Managers as the inspector of election to act at the meeting and any adjournment thereof. If an inspector of election is not so appointed, or if any such person fails to appear or refuses to act, the Chairman of any such meeting may, and on the request of any Member or his proxy shall, make such appointment at the meeting. The inspector of election shall determine the number of Units outstanding and the voting power of each, the Units represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all Members.

8.4.10 Record Date and Closing Company Books. When a record date is fixed, only Members of record on that date are entitled to notice of and to vote at the meeting or to receive a Distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any Units on the books of the Company after the record date.

8.5 Rights of Members. No Owner shall have the right or power to: (i) withdraw or reduce its contribution to the capital of the Company, except as a result of the dissolution and termination of the Company or as otherwise provided in this Agreement or by law; (ii) bring an action for partition against the Company; or (iii) demand or receive property other than cash in return for its Capital Contribution. Except as provided in this Agreement, no Owner shall have priority over any other Owner either as to the return of Capital Contributions or as to allocations of the Net Income, Net Loss or Distributions of the Company. Other than upon the termination and dissolution of the Company as provided by this Agreement, there has been no time agreed upon when the contribution of each Owner is to be returned.

8.6 Restrictions on Members. No Member shall:

8.6.1 Disclose to any non-Member (other than the Member's lawyers, accountants or consultants) and/or commercially exploit any of the Company's business practices, trade secrets or any other information not generally known to the business community;

8.6.2 Do any other act or deed with the intention of harming the business operations of the Company; or

8.6.3 Do any act contrary to this Agreement.

8.7 Return of Capital of Owner. In accordance with the Act, an Owner may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Owner. If any court of competent jurisdiction holds that any Owner is obligated to make any such payment, such obligation shall be the obligation of such Owner and not of the Company, the Board of Managers or any other Owner.

9. Assignment of Units.

9.1 Permitted Assignments. A Member may only sell, assign, hypothecate, encumber or otherwise transfer any part (but not less than the lesser of (i) one Unit or (ii) the Member's entire interest in the Company) or all of his or her Units if the following requirements are satisfied:

9.1.1 The Board of Managers consents in writing to the transfer;

9.1.2 No Member shall have the right to transfer any Unit to any minor or to any person who, for any reason, lacks the capacity to contract for himself under applicable law. Such limitations shall not, however, restrict the right of any Member to transfer any one or more Units to a custodian or a trustee for a minor or other person who lacks such contractual capacity;

9.1.3 The Board of Managers, with advice of counsel, must determine that such transfer will not violate any federal or state securities laws;

9.1.4 The Board of Managers, with advice of counsel, must determine that, despite such transfer, Units will not be deemed "traded on an established securities market" or "readily tradable on a secondary market (or the substantial equivalent thereof)" under the provisions applicable to publicly traded partnership status. In making this determination, the Board of Managers shall be entitled to limit any transfers so that the transfers comply with one of the safe harbors in the Treasury Regulations;

9.1.5 Any such transfer shall be by a written instrument of assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the assignor of such Units and accepted by the Board of Managers in writing. Upon such acceptance by the Board of Managers, such an assignee shall take subject to all terms of this Agreement and shall become an Economic Interest Owner;

9.1.6 A transfer fee shall be paid by the transferring Member in such amount as may be required by the Board of Managers to cover all reasonable expenses, including attorneys' fees, connected with such assignment;

9.1.7 The transfer will not result in Employee Benefit Plans owning 25% or more of any Class of Units;

9.1.8 The transfer would not cause, in the opinion of counsel to the Blackstone Entity, the termination of the Company or the Blackstone Entity;

9.1.9 The transfer would not require the Blackstone Entity to be regulated under the Investment Company Act of 1940 or the Investment Advisers Act of 1940; and

9.1.10 BRE/SW Member LLC, a Delaware limited liability company ("BRE/SW"), a member of the Blackstone Entity, provides their prior written consent for such transfer as provided in Section 6.1 of the Blackstone Entity Agreement.

9.2 Substituted Member.

9.2.1 Conditions to be Satisfied. No Economic Interest Owner shall have the right to become a Substituted Member unless the Board of Managers shall consent thereto in accordance with Section 9.2.2 and all of the following conditions are satisfied:

(a) A duly executed and acknowledged written instrument of assignment shall have been filed with the Company, which instrument shall specify the number of Units being assigned and set forth the intention of the assignor that the assignee succeed to the assignor's interest as a Substituted Member in his place;

(b) The assignor and assignee shall have executed, acknowledged and delivered such other instruments as the Board of Managers may deem necessary or desirable to effect such substitution, which may include an opinion of counsel regarding the effect and legality of any such proposed transfer, and which shall include: (i) the written acceptance and adoption by the assignee of the provisions of this Agreement and (ii) the execution, acknowledgment and delivery to the Board of Managers of a special power of attorney, the form and content of which are more fully described herein; and

(c) A transfer fee sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

9.2.2 Consent of Board of Managers. The consent of the Board of Managers shall be required to admit an Economic Interest Owner as a Substituted Member. The granting or withholding of such consent shall be within the sole discretion of the Board of Managers.

9.2.3 Consent of Members. By executing or adopting this Agreement, each Member hereby consents to the admission of additional or Substituted Members, and to any Economic Interest Owner becoming a Substituted Member upon consent of the Board of Managers and in compliance with this Agreement.

9.3 Rights of Economic Interest Owner. An Economic Interest Owner shall be entitled to receive Distributions from the Company attributable to the Units acquired by reason of such assignment from and after the effective date of the assignment; provided, however, that notwithstanding anything herein to the contrary, the Company shall be entitled to treat the assignor of such Units as the absolute owner thereof in all respects, and shall incur no liability for allocations of Net Income and Net Loss or Distributions, or for the transmittal of reports or other information until the written instrument of assignment has been received by the Company and recorded on its books. The effective date of such assignment shall be the date on which all of the requirements of this Section have been complied with, subject to Section 4.9.

9.4 Right to Inspect Books. Economic Interest Owners shall have no right to inspect the Company's books or records, to vote on Company matters, or to exercise any other right or privilege as Members, until they are admitted to the Company as Substituted Members except as required by the Act.

9.5 Assignment of 50% or More of Units. Without the consent of the Board of Managers in its sole discretion, no assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units assigned within the 13 immediately preceding months, would, in the opinion of counsel for the Company, result in the termination of the Company under the Code.

9.6 Transfer Subject to Law. No assignment, sale, transfer, exchange or other disposition of any Units may be made except in compliance with the applicable governmental laws and regulations, including state and federal securities laws.

9.7 Transfer in Violation Not Recognized. Any assignment, sale, transfer, exchange or other disposition in contravention of the provisions of this Section 9 shall be void and ineffectual and shall not bind or be recognized by the Company.

9.8 Termination of Membership Interest. Upon the transfer of a Unit in violation of this Agreement, the Membership Interest of the Member purporting to transfer the Units shall be converted into an Economic Interest.

9.9 Repurchase of Preferred Units

9.9.1 Redemption at Preferred Member's Option.

(a) Commencing on the date that is 180 days after the fifth anniversary of the Closing Date (as defined in the Blackstone Agreement, with such date being the “Put Commencement Date”), each Preferred Member shall have the right (the “Preferred Redemption Right”) to require the Company to redeem on the Preferred Redemption Date all or any portion of the Preferred Units held by such Preferred Member at a redemption price per Preferred Unit equal to the Redemption Price in cash to be paid by the Company. The Preferred Redemption Right shall be exercised pursuant to a Notice of Redemption delivered to the Board of Managers by the Preferred Member. The Preferred Redemption Right shall only be available, and a Notice of Redemption in respect thereof may only be delivered (i) once per annum during the thirty calendar day period commencing on the Put Commencement Date and each anniversary of the Put Commencement Date and (ii) within 30 days following the occurrence of an Event (as described in clause (y) of Paragraph F(i) of Annex A to the Blackstone Agreement).

(b) In addition to the rights described in clause (a) above, in the event that the Class A Preferred Members (as defined in the Blackstone Agreement) have the right to require the Blackstone Entity to redeem all of the Class A Preferred Units (as defined in the Blackstone Agreement) held by such Class A Preferred Members (such event being the “Blackstone Put Event”), then each Preferred Member shall have the right to require the Company to redeem all, but not less than all, of the Preferred Units held by such Preferred Member at a redemption price per Preferred Unit equal to the Redemption Price in cash to be paid by the Company. The Preferred Redemption Right shall be exercised pursuant to a Notice of Redemption delivered to the Board of Managers by the Preferred Member within ten (10) business Days of receipt of notice from the Company informing the Preferred Members of the occurrence of the Blackstone Put Event. The closing date of the redemption described in this Section 9.9.1(b) shall be not less than two business days after the closing date of the redemption of the Class A Preferred Units by the Blackstone Entity pursuant to the Blackstone Put Event.

(c) In the event any applicable redemption date shall not be a business day, then payment of the Redemption Price need not be made on such redemption date but may be made on the next succeeding business day with the same force and effect as if made on such applicable redemption date and no interest, additional dividends or other sum shall accrue on the amount payable for the period from and after such redemption date to such next succeeding business day.

(d) If notice of redemption of any Preferred Unit has been given and if the funds necessary for such redemption have been set aside by the Company for the benefit of the Preferred Member of any Preferred Units so called for redemption, then (i) on and after the applicable redemption date, distributions will cease to accrue on such Preferred Units and (ii) on and after the applicable redemption date, such Preferred Units shall be deemed to be no longer outstanding and all rights of the Preferred Member of such Preferred Units will terminate, except the right to receive the Redemption Price.

(e) To the fullest extent permitted by applicable law, on the applicable date of redemption, (i) the Preferred Member (A) shall have no further rights in respect of such Preferred Units (including without limitation any right to receive any Distributions paid after the applicable date of redemption), other than the right to receive the Redemption Price and (B) shall no longer be a Member in respect of such redeemed Preferred Units and (ii) any redeemed Preferred Units shall no longer be deemed to be outstanding, whether or not certificates (if any) representing such Preferred Units shall have been received by the Company.

9.9.2 Redemption at Company’s Option.

(a) In the event that the Company is required to tender for redemption all or any portion of the Class A Preferred Units held by the Company in the Blackstone Entity pursuant to the Blackstone Agreement, the Company shall have the right, in its sole discretion (the “Company Redemption Right”), to redeem all or a portion of the Preferred Units then outstanding, for a cash redemption price per Preferred Units equal to the Redemption Price. The percentage of the outstanding Preferred Units subject to the Company Redemption Right shall be equal to the percentage of the outstanding Class A Preferred Units of the Blackstone Entity that are subject to the underlying redemption by the Blackstone Entity. The Company shall exercise the Company Redemption Right by providing each Preferred Member not less than four days' nor more than 60 days' prior written notice of the applicable date of redemption. Such notice shall include (1) the number of Preferred Units to be redeemed from such Preferred Member, (2) the applicable Redemption Price, (3) the applicable date of redemption and (4) that Distributions on the Preferred Units to be redeemed shall cease to accrue on such redemption date. No failure to

give or defect in such notice or defect in the mailing thereof shall affect the validity of the proceedings for the redemption of any Preferred Units except as to the Preferred Member to whom notice was defective or not given.

(b) In the event any applicable redemption date shall not be a business day, then payment of the Redemption Price need not be made on such redemption date but may be made on the next succeeding business day with the same force and effect as if made on such applicable redemption date and no interest, additional Distributions or other sum shall accrue on the amount payable for the period from and after such redemption date to such next succeeding business day. If notice of redemption of any Preferred Unit has been given and if the funds necessary for such redemption have been set aside by the Company for the benefit of the holder of any Preferred Units so called for redemption, then (i) on and after the applicable redemption date, Distributions will cease to accrue on such Preferred Units and (ii) on and after the redemption date, such Preferred Units shall be deemed to be no longer outstanding and all rights of the holder of such Preferred Units will terminate, except the right to receive the Redemption Price.

(c) To the fullest extent permitted by applicable law, on the applicable date of redemption, (i) the Preferred Member redeemed pursuant to this section, (A) shall have no further rights in respect of such Preferred Units (including without limitation any right to receive any Distributions paid after the applicable date of redemption), other than the right to receive the applicable Redemption Price, and (B) shall no longer be a Member in respect of such redeemed Preferred Units and (2) any redeemed Preferred Units shall no longer be deemed to be outstanding, whether or not any certificates (if any) representing such Preferred Units shall have been received by the Company.

9.10 Special Units. The Special Units shall not be sold, assigned, hypothecated, encumbered or otherwise transferred by the Special Members except in the event of death of a Special Member. In the event of death, the assignee shall only become an Economic Interest Owner and the Economic Interest shall be subject to the limitations set forth in this Section 9.10.

10. Books, Records, Accounting and Reports.

10.1 Records. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

10.1.1 A current list of the name and last known business, residence or mailing address of each Owner and Manager;

10.1.2 A copy of the Certificate of Formation and all amendments thereto, together with any powers of attorney pursuant to which the Certificate of Formation or any amendments thereto were executed;

10.1.3 Copies of the Company's federal, state and local income tax or information returns and reports, if any, for the six most recent fiscal years;

10.1.4 Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed;

10.1.5 Copies of any financial statements of the Company, if any, for the six most recent years; and

10.1.6 The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four fiscal years.

10.2 Delivery to Members and Inspection. Each Member, or its representative designated in writing, has the right, upon reasonable written request for purposes related to the interest of that person as a Member, which purposes are set forth in the written request, to receive from the Company:

10.2.1 True and full information regarding the status of the business and financial condition of the Company;

10.2.2 Promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year;

10.2.3 A current list of the name and last known business, residence or mailing address of each Owner and Manager;

10.2.4 A copy of this Agreement and the Certificate of Formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which this Agreement and the Certificate of Formation and all amendments thereto have been executed; and

10.2.5 True and full information regarding the amount of cash and a description and statement of the agreed value of any property or services contributed by each Owner and which each Owner has agreed to contribute in the future, and the date on which each became an Owner.

10.3 Annual Report. The Board of Managers will cause the Company, at the Company's expense, to prepare an annual report containing a year end balance sheet (or statement of net assets), income statement and a statement of changes in financial position. Copies of such annual report shall be distributed to each Member within 120 days after the close of each fiscal year of the Company.

10.4 Tax Information. The Board of Managers shall cause the Company, at the Company's expense, to prepare and timely file income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Owners' individual income tax returns to be distributed to the Owners not later than 75 days after the end of the Company's fiscal year.

10.5 Confidentiality. The Manager shall have the right to keep confidential from the Owners, for such period of time as the Board of Managers deems reasonable, any information which the Manager reasonably believes to be in the nature of trade secrets or which the Company is required by law or by agreement with a third party to keep confidential.

11. Termination and Dissolution of the Company.

11.1 Termination of Company. The Company shall be dissolved, shall terminate and its assets shall be disposed of, and its affairs wound up upon the earliest to occur of the following:

11.1.1 Upon the happening of any event of dissolution specified in the Certificate of Formation;

11.1.2 A determination by the Board of Managers to terminate the Company;

11.1.3 Upon the entry of a decree of judicial dissolution;

11.1.4 The expiration of the term of the Company;

11.1.5 Dissolution of the Blackstone Entity.

11.2 Effect of Dissolution. The dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until it has been wound up and its assets have been distributed as provided in Section 11.3 of this Agreement and the Certificate of Formation has been cancelled by the filing of a certificate of cancellation with the office of the Delaware Secretary of State. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement.

11.3 Liquidation of Assets. Upon a dissolution and termination of the Company, the Board of Managers (or in case there is no Manager, the Members or person designated by a Majority Vote) shall take full account of the Company assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining the fair market value thereof, and shall apply and distribute the proceeds therefrom in the following order:

11.3.1 To the payment of creditors of the Company but excluding secured creditors whose obligations will be assumed or otherwise transferred on liquidation of Company assets;

11.3.2 To the setting up of any reserves as required by law for any liabilities or obligations of the Company; provided, however, that said reserves shall be deposited with a bank or trust company in escrow at interest for the purpose of disbursing such reserves for the payment of any of the aforementioned contingencies and, at the expiration of a reasonable period, for the purpose of distributing the balance remaining in accordance with the remaining provisions of this Section 11.3;

11.3.3 To the Preferred Members as set forth in Section 5.4; and

11.3.4 To the Owners as set forth in Section 5.2, which is intended to be in proportion to their positive Capital Account balances as of the date of such Distribution, after giving effect to all Capital Contributions, Distributions and allocations for all periods, including the period during which such Distribution occurs.

11.4 Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions and its Capital Contributions, and shall have no recourse therefor (upon dissolution or otherwise) against any Manager or any Member. No Member shall be required to restore any deficit in the Member's Capital Accounts.

11.5 Liquidation of Member's Interest. If there is a Liquidation of a Member's interest in the Company, any liquidating Distribution pursuant to such Liquidation shall be made only to the extent of the positive Capital Account balance, if any, of such Member for the taxable year during which such Liquidation occurs after proper adjustments for allocations and Distributions for such taxable year up to the time of Liquidation. Such Distributions shall be made by the end of the taxable year of the Company during which such Liquidation occurs, or if later, within 90 days after such Liquidation.

12. Special and Limited Power of Attorney.

12.1 Power of Attorney. The Board of Managers shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such Member to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

12.1.1 This Agreement, as well as any amendments to the foregoing which, under the laws of the State of Delaware or the laws of any other state, are required to be filed or which the Board of Managers shall deem it advisable to file;

12.1.2 Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Board of Managers shall deem it advisable to file;

12.1.3 Any instrument or document that may be required to effect the continuation of the Company, the admission of Substituted Members, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement); and

12.1.4 Any and all other instruments as the Board of Managers may deem necessary or desirable to effect the purposes of this Agreement and carry out fully its provisions, including, but not limited to, those in Section 14.

12.2 Provision of Power of Attorney. The special and limited power of attorney of the Board of Managers:

12.2.1 Is a special power of attorney coupled with the interest in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

12.2.2 May be exercised by the Board of Managers by and through one or more Managers for each of the Members by the signature of the Manager acting as attorney-in-fact for all of the Members, together with a list of all Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and

12.2.3 Shall survive an assignment by a Member of all or any portion of his Units except that, where the assignee of the Units owned by the Member has been approved by the Manager for admission to the Company as a Substituted Member, the special power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument or document necessary to effect such substitution.

12.3 Notice to Members. The Board of Managers shall promptly furnish to a Member a copy of any amendment to this Agreement executed by a Manager pursuant to a power of attorney from the Member.

13. Relationship of this Agreement to the Act. Many of the terms of this Agreement are intended to alter or extend provisions of the Act as they may apply to the Company or the Members. Any failure of this Agreement to mention or specify the relationship of such terms to provisions of the Act that may affect the scope or application of such terms shall not be construed to mean that any of such terms is not intended to be a limited liability company agreement provision authorized or permitted by the Act or which in whole or in part alters, extends or supplants provisions of the Act as may be allowed thereby.

14. Amendment of Agreement.

14.1 Admission of Member. Amendments to this Agreement for the admission of any Member or Substituted Member shall not, if in accordance with the terms of this Agreement, require the consent of any Member.

14.2 Amendments with Consent of Members. In addition to any amendments otherwise authorized herein, this Agreement may be amended by the Board of Managers with a Majority Vote; provided, however, that any amendment that would treat a specific Member less favorably than another Member (in application but not in effect) shall require the vote of such adversely affected Member.

14.3 Amendments Without Consent of the Members. In addition to the Amendments authorized pursuant to Section 4.10 and Section 7.5.11 or otherwise authorized herein, the Board of Managers may amend this Agreement, without the consent of any of the Members, to (i) change the name and/or principal place of business of the Company, or (ii) decrease the rights and powers of the Board of Managers (so long as such decrease does not impair the ability of the Managers to manage the Company and conduct its business and affairs); provided, however, that no amendment shall be adopted pursuant to this Section 14.3 unless the adoption thereof (A) is for the benefit of or not adverse to the interests of the Members, and (B) does not affect the limited liability of the Members or the status of the Company as a partnership for federal income tax purposes.

14.4 Execution and Recording of Amendments. Any amendment to this Agreement shall be executed by the Board of Managers, and by the Board of Managers as attorney-in-fact for the Members pursuant to the power of attorney contained in Section 12. After the execution of such amendment, the Managers shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company holds any Property or otherwise does business.

14.5 Change in Indemnification of Managers and Officers. Notwithstanding any other provision of this Section 14, Section 7.10 shall not be amended without the consent of any Covered Person that would be adversely affected by any such amendment.

15. Miscellaneous.

15.1 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

15.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Members.

15.3 Severability. In the event any sentence or Section of this Agreement is declared by a court of competent jurisdiction to be void, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

15.4 Notices. All notices under this Agreement shall be in writing and shall be given to the Member or Economic Interest Owner entitled thereto, by personal service or by electronic or United States mail, posted to the address maintained by the Company for such person or at such other address as he may specify in writing.

15.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

15.6 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provisions hereof.

15.7 Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, and vice versa.

15.8 Time. Time is of the essence with respect to this Agreement.

15.9 Additional Documents. Each Member, upon the request of the Board of Managers, shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a Notary Public of any signature made by a Member.

15.10 Descriptions. All descriptions referred to in this Agreement are expressly incorporated herein by reference as if set forth in full, whether or not attached hereto.

15.11 Disputes. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the Units shall be settled by the Court.

15.12 Attorneys' Fees. In the event that litigation is commenced to enforce any of the provisions of this Agreement, to recover damages for breach of any of the provisions of this Agreement, or to obtain declaratory relief in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, whether or not such action proceeds to judgment. The prevailing party shall be determined by the Court.

15.13 Venue. Any action relating to or arising out of this Agreement or an investment in the Company shall be brought only in the Court.

15.14 Partition. The Members agree that the assets of the Company are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that he may have, or may obtain, to maintain any action for partition of any of the assets of the Company.

15.15 Integrated and Binding Agreement. This Agreement contains the entire understanding and agreement among the Members with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the Members other than those set forth herein except the Subscription Agreement. This Agreement may be amended only as provided in this Agreement.

15.16 Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Members in any respect.

15.17 Title to Company Property. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member's Interest shall be personal property for all purposes.

IN WITNESS WHEREOF, this Agreement is effective as of the date first set forth in the preamble.

INITIAL MANAGER:

MICHAEL A. GRASSMUECK, in his capacity as
Receiver for Debtor and the Receivership Entities

INITIAL MEMBER:

STAYTON SW ASSISTED LIVING, L.L.C., an
Oregon limited liability company

By: _____
Clyde A. Hamstreet, in his capacity as Chief
Restructuring Officer for Debtor and the
Receivership Entities

By: _____
Michael A. Grassmueck, in his capacity as Receiver
for Debtor and the Receivership Entities

PREFERRED MEMBERS:

CLYDE A. HAMSTREET, in his capacity as Chief
Restructuring Officer for Debtor and the Receivership
Entities, on behalf of all of the members set forth on
Exhibit B

COMMON MEMBERS:

CLYDE A. HAMSTREET, in his capacity as Chief
Restructuring Officer for Debtor and the Receivership
Entities, on behalf of all of the members set forth on
Exhibit B

SPECIAL MEMBERS:

JON M. HARDER, an individual

DARRYL F. FISHER, an individual

WALLACE GUTZLER, an individual

EXHIBIT A

DEFINITIONS

“Act” shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

“Additional Elected Amount” shall have the meaning set forth in Section 3.6.

“Additional Interests” shall have the meaning set forth in Section 3.4.

“Adjusted Capital Account Deficit” shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which the Member is obligated to restore and the Member’s share of Member Minimum Gain and Company Minimum Gain; and

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

“Affiliate” shall mean (i) any person directly or indirectly controlling, controlled by or under common control with another person; (ii) a person owning or controlling 10% or more of the outstanding voting securities of such other person; (iii) any officer, director or partner of such other person; and (iv) if such other person is an officer, director or partner, any company for which such person acts in any capacity. The term “person” shall include any natural person, corporation, partnership, trust, unincorporated association or other legal entity.

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

“Applicable Percentage” shall mean (i) 12.5% for any Property sold in the first year after the Closing or (ii) 10% for any Property sold after the first anniversary of the Closing but during the Protected Period.

“Bankruptcy Case” shall mean Stayton SW Assisted Living, L.L.C. (Constituting the Sunwest Unitary Enterprise as determined by order entered on October 2, 2009 in U.S. District Court Case No. 09-cv-6056-HO), USDC Case No. 09-cv-6082-HO.

“Blackstone Agreement” shall mean that certain Amended And Restated Limited Liability Company Agreement of BRE/SW PORTFOLIO LLC dated July [], 2010.

“Blackstone Call Notice” shall have the meaning set forth in Section 3.5.1.

“Blackstone Capital Call” shall have the meaning set forth in Section 3.5.1.

“Blackstone Contribution Notice” shall have the meaning set forth in Section 3.5.1.

“Blackstone Entity” shall mean BRE/SW PORTFOLIO LLC, a Delaware limited liability company.

“Blackstone Interest” shall mean the “Common Interest” and the “Class A Preferred Units” held by the Company in the Blackstone Entity.

“Blackstone Required Capital” shall have the meaning set forth in Section 3.5.1.

“Blackstone Second Contribution Notice” shall have the meaning set forth in Section 3.5.1.

“Board of Managers” means the Board of Managers of the Company as elected pursuant to Section 7.3; provided, however, that until the first Board of Managers is elected pursuant to Section 7.3, the Board of Managers shall refer to the Initial Manager.

“Book Gain” shall mean the excess, if any, of the fair market value of the Property over its adjusted basis for federal income tax purposes at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

“Book Loss” shall mean the excess, if any, of the adjusted basis of Property for federal income tax purposes over its fair market value at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

“Book Value” shall mean the adjusted basis of Property for federal income tax purposes increased or decreased by Book Gain, Book Loss, Built-In Gain and Built-In Loss as reduced by depreciation, amortization or other cost recovery deductions, or otherwise, based on such Book Value.

“Built-In Gain (or Loss)” shall mean the amount, if any, by which the agreed value of contributed Property exceeds (or is lower than) the adjusted basis of Property contributed to the Company by a Member immediately after its contribution by the Member to the capital of the Company.

“Capital Account” with respect to any Member (or such Member’s assignee) shall mean such Member’s initial Capital Contribution adjusted as follows:

- (i) A Member’s Capital Account shall be increased by:
 - (a) such Member’s share of Net Income;
 - (b) any item of income or gain specially allocated to a Member and not included in Net Income or Net Loss;
 - (c) any additional cash Capital Contribution made by such Member to the Company; and
 - (d) the fair market value of any additional Capital Contribution consisting of property contributed by such Member to the capital of the Company reduced by any liabilities assumed by the Company in connection with such contribution or to which the property is subject.
- (ii) A Member’s Capital Account shall be reduced by:
 - (a) such Member’s share of Net Loss;
 - (b) any deduction specially allocated to a Member and not included in Net Income or Net Loss;
 - (c) any cash Distribution made to such Member; and
 - (d) the fair market value, as agreed to by the Board of Managers and the Members pursuant to a Majority Vote, of any Property (reduced by any liabilities assumed by the Member in connection with the Distribution or to which the distributed Property is subject) distributed to such Member; provided that, upon liquidation and winding up of the Company, unsold Property will be valued for Distribution at its fair market value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Company then sold the Property for its fair market value. Such fair market value shall not be less than the amount of any nonrecourse indebtedness that is secured by the Property.

Property other than money may not be contributed to the Company except as specifically provided in this Agreement. Property of the Company may not be revalued for purposes of calculating Capital Accounts unless the Board of Managers determines the fair market value of the Property and Company complies with the requirements of Treasury Regulations Section 1.704-1(b)(2)(iv)(f) and (g); provided, however, for purposes of calculating Book Gain or Book Loss (but not for purposes of adjusting Capital Accounts to reflect the contribution and distribution of such Property), the fair market value of Property shall be deemed to be no less than the outstanding balance of any nonrecourse indebtedness secured by such Property.

The Capital Account of a Substituted Member shall include the Capital Account of his transferor. Notwithstanding anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b). For purposes of this Agreement, any references to the Treasury Regulations shall include corresponding subsequent provisions.

“Capital Contribution” shall mean the gross amount invested in the Company by a Member. In the plural, “Capital Contributions” shall mean the aggregate amount invested in the Company by all of the Members.

“Cash From Operations” shall mean the net cash realized by the Company from all sources, including, but not limited to, the operations of the Company including the sale, financing, refinancing or other disposition of the Blackstone Interest after payment of all cash expenditures of the Company, including, but not limited to, all operating expenses including all fees payable to the Managers, all payments of principal and interest on indebtedness, expenses for repairs and maintenance, capital improvements and replacements, and such reserves and retentions as the Board of Managers reasonably determine to be necessary and desirable in connection with Company operations with its then existing assets and any anticipated acquisitions.

“Certificate of Formation” shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Delaware as the same may be amended or restated from time to time.

“Closing” shall mean the acquisition of certain properties by the Blackstone Entity as provided for in the Bankruptcy Case.

“CM Percentage” shall mean 1 minus the SM Percentage.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

“Common Member” shall mean any holder of a Common Unit who is admitted to the Company as a Common Member pursuant to Section 3.2.2, and any Person who becomes a Substituted Member in such Person’s capacity as a Common Member.

“Common Unit” shall represent an interest in the Company entitling a Common Member to the respective voting and other rights and Profit and Loss as provided for in this Agreement.

“Company” shall refer to Sunwest Rollover Member LLC.

“Company Minimum Gain” shall have the same meaning as “partnership minimum gain” as set forth in Treasury Regulations Sections 1.704-2(d).

“Conversion Event” shall mean the time when the Conversion Payment received by the General Unsecured Creditors and/or Investors is at least equal to (i) \$500,000,000, plus (ii) the total of any additional Capital Contributions made by the Members pursuant to Section 3.4 and Section 3.5, plus (iii) any payments or distributions received by General Unsecured Creditors and/or Investors from or in respect of fines, penalties, remedial sanctions or civil compromise assessed against any one or more of the Special Members, their family members or their Affiliates, which sums are collected or distributed by any state or federal regulatory agency. The occurrence of the Conversion Event shall be determined in the sole and absolute discretion of the Initial Manager until such time as the Initial Manager is no longer the receiver applicable to the Bankruptcy Case and the receivership is closed, even

if Initial Manager is no longer a Manager. After the closure of the receivership of the Bankruptcy Case, the Board of Managers shall determine if a Conversion Event has occurred.

“Conversion Payment” shall mean the total cash received by the General Unsecured Creditors and/or Investors pursuant to the Bankruptcy Case. The Conversion Payment shall be determined in the sole and absolute discretion of the Initial Manager until such time as the Initial Manager is no longer the receiver applicable to the Bankruptcy Case and the receivership is closed, even if Initial Manager is no longer a Manager. After the closure of the receivership applicable to the Bankruptcy Case, the Board of Managers shall determine the Conversion Payment. Conversion Payment does not include any payments or distributions received by General Unsecured Creditors and/or Investors from or in respect of fines, penalties, remedial sanctions or civil compromise assessed against any one or more of the Special Members, their family members or their Affiliates, which sums are collected or distributed by any state or federal regulatory agency.

“Court” shall mean the United States District Court for the District of Oregon.

“Debtor” shall mean the unitary enterprise comprised of the consolidated assets and liabilities of the Receivership Entities as provided in the distribution plan related to the Bankruptcy Case and recognized and ordered by the Court.

“Distribution” shall refer to any money or other property transferred without consideration (other than repurchased Units) to Members or Owners with respect to their Interests or Units in the Company, but shall not include any payments to any Manager pursuant to Section 6.

“Economic Interest” shall mean an interest in the Net Income, Net Loss and Distributions of the Company but shall not include any right to vote or to participate in the management of the Company.

“Electing Member” shall have the meaning set forth in Section 3.5.1.

“Economic Interest Owner” shall mean the owner of an Economic Interest who is not a Member.

“Employee Benefit Plan” shall have the meaning set forth in Section 3(3) of the Employee Retirement Income Security Act of 1974.

“Expenses” shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by a Covered Person or the amount of judgments or fines against a Covered Person.

“General Unsecured Creditors” shall mean Unsecured Creditors holding a Class 6 General Unsecured Claim pursuant to the Reorganization Plan.

“HFG Participation Amount” shall mean an amount equal to (i) the Conversion Payment, minus (ii) the total of any additional Capital Contributions made by the Members pursuant to Section 3.4 and Section 3.5, minus (iii) any payments or distributions received by General Unsecured Creditors and/or Investors from or in respect of fines, penalties, remedial sanctions or civil compromise assessed against any one or more of the Special Members, their family members or their Affiliates, which sums are collected or distributed by any state or federal regulatory agency. The HFG Participation Amount shall be determined in the sole and absolute discretion of the Initial Manager until such time as the Initial Manager is no longer the receiver applicable to the Bankruptcy Case and the receivership is closed, even if Initial Manager is no longer a Manager. After the closure of the receivership of the Bankruptcy Case, the Board of Managers shall determine the HFG Participation Amount.

“Independent Manager” shall mean a manager who is not an “interested person” as defined in Section 2(a)(19) of the Investment Company Act of 1940, as amended.

“Initial Manager” shall mean Michael Grassmueck, in his capacity as the receiver in the Bankruptcy Case.

“Initial Member” shall mean Stayton SW Assisted Living, L.L.C., an Oregon limited liability company.

“Interest” shall mean a Membership Interest or an Economic Interest.

“Investor” shall have the same meaning as the term “Investor” in the Amended Joint Plan of Reorganization pursuant to the Bankruptcy Case.

“Liquidation” means in respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may exist for purposes of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and in respect to a Member where the Company is not in Liquidation means the date upon which occurs the termination of the Member’s entire interest in the Company by means of a Distribution or the making of the last of a series of Distributions (whether or not made in more than one year) to the Member by the Company.

“Liquidation Preference” shall mean a \$100.00 liquidation preference for each of the Preferred Units, less any amounts paid in respect of such Preferred Units as Priority Tax Distributions which have not previously been off-set by prior Distributions; provided, however, for purposes of calculating the Preferred Return any reductions relating to Priority Tax Distributions shall not be taken into account.

“Majority Vote” shall mean, with respect to a matter, (i) the affirmative vote of a majority of the outstanding Units entitled to vote on such matter that are present in person or by proxy at a meeting for which a quorum is present, or (ii) the affirmative vote or consent of a majority of the outstanding Units entitled to vote on or consent to such matter when action is taken by written consent of the Members pursuant to Section 8.4.5. Preferred Members and Common Members shall be entitled to cast one vote for each Unit they own, and cast a proportional fractional vote for each fractional Unit they own.

“Manager” shall refer to a member of the Board of Managers or to the Initial Manager while the Initial Manager is appointed as the manager of the Company. The term “Manager” shall also refer to any successor or additional Manager who is elected as a member of the Board of Managers.

“Member” shall mean any holder of a Unit who is admitted to the Company as a Preferred Member or a Common Member, as applicable, including a Manager to the extent such Manger has acquired Units.

“Member Vote” shall mean, with respect to a matter and regardless of whether action is taken at a meeting of the Members or by written consent pursuant to Section 8.4.5, the affirmative vote or consent of a majority of the outstanding Units entitled to vote on or consent to such matter. Preferred Members and Common Members shall be entitled to cast one vote for each Unit they own, and cast a proportional fractional vote for each fractional Unit they own.

“Member Minimum Gain” shall mean “partner nonrecourse debt minimum gain” as determined under Treasury Regulations Section 1.704-2(i)(3).

“Member Nonrecourse Debt” shall mean “partner nonrecourse debt” as set forth in Treasury Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Deductions” shall have the same meaning as “partner nonrecourse deductions” and the amount thereof shall be as set forth in Treasury Regulations Section 1.704-2(i).

“Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and such voting and other rights and privileges that the Member may enjoy by being a Member.

“Net Capital Contribution” shall mean a Preferred Member’s original Capital Contribution reduced by any Distribution to the Member pursuant to Section 5.4 or Section 9.9.

“Net Income” or “Net Loss” shall mean, respectively, for each taxable year of the Company the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Company as determined for federal income tax purposes in accordance with Section 703(a) of the Code (including all items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703(a)(1) of the Code) (other than any specific item of income, gain (exclusive of Built-In Gain), loss (exclusive of Built-In Loss), deduction or credit subject to special allocation under this Agreement), with the following modifications:

- (a) The amount determined above shall be increased by any income exempt from federal income tax;
- (b) The amount determined above shall be reduced by any expenditures described in Section 705(a)(2)(B) of the Code or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i);
- (c) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner; and
- (d) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of Property attributable to unrealized gain or loss in such Property shall be treated as Net Income and Net Loss.

“Nominee” shall have the meaning set forth in Section 7.3.

“Nonrecourse Debt” shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

“Nonrecourse Deductions” shall have the meaning, and the amount thereof shall be, as set forth in Treasury Regulations Section 1.704-2(c).

“Notice of Redemption” shall mean a notice substantially in the form attached hereto as Exhibit D.

“Officer” shall mean an individual designated as an officer of the Company by the Board of Managers pursuant to Section 7.13.

“Original LLC Agreement” shall have the meaning set forth in the Recitals of this Agreement.

“Owner” shall mean a Member or the holder of an Economic Interest.

“Preferred Member” shall mean any holder of a Preferred Unit who is admitted to the Company as a Preferred Member pursuant to Section 3.2.3, and any Person who becomes a Substituted Member in such Person’s capacity as a Preferred Member.

“Preferred Redemption Date” means the last business day of the fiscal quarter of the Company in which the Board of Managers receives the applicable Notice of Redemption pursuant to Section 9.9.1 or, if the last business day of such fiscal quarter is less than 10 business days from the date on which the Board of Managers receives the applicable Notice of Redemption pursuant to Section 9.9.1 hereof, then the last business day of the next subsequent fiscal quarter of the Company.

“Preferred Return” shall mean an amount equal to a 6% cumulative but not compounded annual return on a Preferred Member’s Net Capital Contribution. The amount of any Preferred Return payable shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

“Preferred Unit” shall represent an interest in the Company entitling a Preferred Member to the respective voting and other rights and Profit and Loss as provided for in this Agreement.

“Prime Rate” shall mean the reference rate announced from time-to-time by the Wall Street Journal, and changes in the Prime Rate shall be deemed to occur on the date that changes in such rate are announced.

“Priority Tax Distribution” shall have the meaning set forth in Section 5.5.

“Proceeding” shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which a Covered Person was, is or will be involved as a party or otherwise by reason of the fact that such Covered Person is or was a Manager, director or officer of the Company, by reason of any action taken by such Covered Person or of any action on such Covered Person’s part while acting as a Manager, director or officer of the Company, or by reason of the fact that such Covered Person is or was serving at the request of the Company as a manager, director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under Section 7; except any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding initiated by a Covered Person against the Company or to enforce such Covered Person’s rights under Section 7.

“Property” shall refer to any or all of such real and tangible or intangible personal property or properties as may be acquired by the Company.

“Protected Period” shall have the meaning set forth in Section 5.5.

“Protected Sale” means the sale of a Project in a taxable transaction within the Protected Period as set forth in Section 5.5.1; provided, however, a “Protected Sale” shall not include (i) transfers of a Property made in connection with a non-taxable Code Section 1031 transaction, a non-taxable Code Section 1033 transaction or other non-taxable transaction (e.g., a contribution of the Property to an operating partnership of a REIT in exchange for operating partnership units); or (ii) transfers of a Property made pursuant to a foreclosure, deed in lieu of foreclosure, UCC sale or similar transfer for the benefit of creditors; provided, however, that with respect to any such transfer of a Property pursuant to indebtedness that (a) is secured solely by such Property, (b) is not subject to any guarantees or co-borrowers, (c) is not otherwise cross-collateralized, the Company shall, to the extent that a Member that has contributed such Property arranges for lender consent (as part of a forbearance agreement or otherwise) to transfer of the Property to such Member or its designee, transfer such Property to such Member or its designee on mutually acceptable terms to the Company, such Member and the Blackstone Entity.

“Receivership Entities” shall mean all entities over which Michael Grassmueck has been appointed to act as a federal equity receiver and the Clyde Hamstreet has been appointed to act as chief restructuring officer.

“Redemption Price” means an amount per Preferred Unit equal to the Liquidation Preference in respect of such Preferred Unit, plus all accrued and unpaid distributions on such Preferred Unit through the applicable date of redemption.

“Regulatory Allocations” shall mean the allocations set forth in Sections 4.2.1 through 4.2.7.

“Reorganization Plan” shall mean the Plan of Reorganization confirmed by Order of the Court in the Bankruptcy Case.

“SM Percentages” shall mean, at any time after a Conversion Event, the percentage of income to be allocated to the Special Members as set forth in Column [] on Exhibit E that is associated with the applicable HFG Participation Amount.

“Special Limitation” shall mean, if the Company has not liquidated by December 31, 2017, an amount equal to the amount that the Special Members would be entitled to receive if the assets of the Company were sold on December 31, 2017 and all of the liabilities of the Company were paid and the net proceeds, after reduction for sales, fees expenses and costs that would occur if the assets were sold, were distributed to the Members in accordance with Sections 5.2 and 5.4. The assets of the Company will be valued by a third party appraiser selected in the sole discretion of the Board of Managers as of December 31, 2017 and the Special Limitation will be determined based on such appraisal.

“Special Member” shall mean any holder of a Special Unit who is admitted to the Company as a Special Member pursuant to Section 3.2.4.

“Special Unit” shall represent an interest in the Company entitling a Special Member to the rights and Profit and Loss as provided for in this Agreement; provided, however, that Special Units shall be nonvoting Units and the holders thereof shall have no voting rights under this Agreement.

“Substituted Member” shall mean any person admitted as a substituted Member pursuant to this Agreement.

“Tax Payment” shall have the meaning set forth in Section 4.12.

“Temporary Investments” shall mean the general obligations of the United States, or its agencies and instrumentalities; and/or deposits accounts with banks which accounts are insured by the Federal Deposit Insurance Corporation or an equivalent insuring organization.

“Unit” shall include Common Units, Preferred Units and the Special Units, and shall represent an interest in the Company entitling the owner of a Common Unit, Preferred Unit or Special Unit, as applicable and if admitted as a Member, to the respective voting and other rights afforded to a Member, and affording to such Member a share in Net Income, Net Loss and Distributions as provided for in this Agreement.

EXHIBIT B

Common Members

Member Name	Capital Contribution	Number of Units
[_____]	\${_____}	[_____]%

Preferred Members

Member Name	Capital Contribution	Number of Units
[_____]	\${_____}	[_____]%

Special Members

Member Name	Capital Contribution	Number of Units
[_____]	\${_____}	[_____]%

EXHIBIT C

COMPENSATION TO MANAGERS

Annual Compensation	\$25,000
For each in person meeting (up to 2 per year)	\$5,000
For each telephonic meeting (up to 4 per year)	\$1,000

EXHIBIT D

FORM OF NOTICE OF REDEMPTION

EXHIBIT E
SM PERCENTAGE

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