

**OPERATING AGREEMENT  
OF  
NAUTILUSX, LLC**

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## OPERATING AGREEMENT

OF

## NAUTILUSX, LLC

This **OPERATING AGREEMENT** (the "Agreement") is entered into and shall be effective on the \_\_\_\_ day of \_\_\_\_\_, 2015, by and among NautilusX, LLC, a limited liability company organized under the laws of the State of New York with a principal place of business located at \_\_\_\_\_ (the "Company"), and the undersigned Members (as defined below). The Company and the Members are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### RECITALS:

**WHEREAS**, in exchange for the Capital Contributions set forth on Schedule 1, the Company issued Units and Membership Interests to the undersigned Members such that each such Member holds the respective Units and Membership Interests set forth on Schedule 1 as of the date hereof; and

**WHEREAS**, in connection with the foregoing, the Members and the Company now desire to adopt this Agreement as the Company's operating agreement in order to, among other things, set forth the respective rights, powers, preferences, limitations and responsibilities of the Parties, establish agreement among the Parties as to the internal affairs of the Company, and govern the conduct of the Company's business.

**NOW, THEREFORE**, the Parties, intending to be legally bound, agree as follows:

### **ARTICLE I DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Act" means the New York Revised Uniform Limited Liability Company Act, and any successor statute, as it may be amended from time to time.

"Additional Capital Contributions" has the meaning set forth in Section 4.2(a) of this Agreement.

“Affiliate” means, in relation to any entity, any other entity which: (i) directly or indirectly Controls, or is Controlled by, or is under common Control with, such entity, (ii) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock, membership interests or other equity interests of such entity (iii) has fifty percent (50%) or more of any class of voting stock, membership interests, or other equity interests that is directly or indirectly beneficially owned or held by such entity, or (iv) either holds a general partnership interest in such entity or such entity holds a general partnership interest in the other entity.

“Agreement” has the meaning set forth in the preamble hereto.

“Capital Account” means, for each Member, the sum of (i) such Member’s Capital Contributions, plus (ii) the Net Profits and other items of Company income and gain allocated to such Member pursuant to Article V, plus (iii) any liabilities of the Company that are assumed by such Member (without duplication of the calculation of Gross Asset Value or other liabilities pursuant to subclause (vi) below), minus (iv) the aggregate amount of Distributions of cash made to such Member, minus (v) the Net Losses and other items of Company expense, loss and deduction allocated to such Member pursuant to Article V, minus (vi) the Gross Asset Value of the allocable share of Company assets distributed to such Member in-kind (as determined by the Manager in its reasonable good faith judgment and net of liabilities assumed by such Member and to which such property is subject), minus (vii) any liabilities of such Member assumed by the Company (without duplication of the calculation of Gross Asset Value or other liabilities pursuant to the definition of “Capital Contribution” below), and, plus or minus (viii) other adjustments in accordance with Treas. Reg. Section 1.704-1. All such Capital Contributions, allocations and Distributions shall be credited or charged, as the case may be, to the appropriate Capital Accounts of the respective Members to whom they apply at the time the Capital Contributions, allocations or Distributions are made.

“Capital Contribution” means a contribution (including any initial Capital Contribution) by a Member to the capital of the Company in cash, property (determined based on the initial Gross Asset Value of the property) or services rendered, or by a promissory note or other obligation to contribute cash or property or to render services, net of any liabilities of such Member that the Company is considered to assume or take under Section 752 of the Code. The current Capital Contribution balance of each Member is set forth on Schedule 1 hereto. Any Additional Capital Contributions of the Members shall be set forth and recorded by the Manager in the books and records of the Company, including by amending Schedule 1 hereto from time to time to reflect any such Additional Capital Contributions.

“Cash Flow” means, for any given Fiscal Year or other period, the amount, if any, by which (i) the sum, without duplication, of (A) the actual gross cash receipts of the Company during such period from whatever source derived (other than from a Liquidation Event) and (B) the amount of the reduction of any previously established Reserves described in clause (ii)(B) herein below that is larger than the amount of

expenses paid from such Reserve, is greater than (ii) the sum, without duplication, of (A) all operating expenses (including, without limitation, taxes, insurance, and debt service) actually paid during such period and (B) such Reserves, if any, as the Manager determines are required for working capital, operating expenses and other capital expenditures of the Company; provided, however, that Cash Flow shall not be debited by expenses paid via Reserves set aside in prior years.

“Certificate” means the Certificate of Formation of the Company filed with the Secretary of State of the State of New York, as the same may be amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended, or any superseding federal tax statute.

“Company” has the meaning set forth in the preamble of this Agreement.

“Company Guarantor” has the meaning set forth in Section 3.12 of this Agreement.

“Company Indebtedness” means any commercial loan or other indebtedness of the Company duly authorized and/or incurred in accordance with this Agreement.

“Contributing Members” has the meaning set forth in Section 4.2(b) of this Agreement.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, voting and governance rights, through contract, or otherwise. “Controlling” and “Controlled by” shall have the respective correlative meanings thereto.

“Covered Persons” has the meaning set forth in Section 3.15 of this Agreement.

“Cram-Down Contribution” has the meaning set forth in Section 4.2(c) of this Agreement.

“Default Amount” has the meaning set forth in Section 4.2(b) of this Agreement.

“Default Loan” has the meaning set forth in Section 4.2(b) of this Agreement.

“Default Rate” has the meaning set forth in Section 4.2(b) of this Agreement.

“Dispute” has the meaning set forth in Section 11.9 of this Agreement.

“Dissociating Member” means a Member who is the subject of an Event of Dissociation.

“Distribution” means any cash or property paid to a Member, in his or her capacity as a Member, by the Company from the operations or liquidation of the Company; provided, however, that none of the following shall be deemed or considered a Distribution: (i) any redemption or repurchase by the Company or any Member of any Units; (ii) any recapitalization or exchange of securities of the Company; (iii) any subdivision (by a split of Units or otherwise) or any combination (by a reverse split of Units or otherwise) of any outstanding Units; or (iv) any fees or remuneration paid to any Member in such Member’s capacity as a manager, officer, employee, consultant, agent or other service provider for the Company or any of the Company’s Affiliates (including any Guaranteed Payment).

“Economic Interest” means a Member’s share of the Net Profits and Net Losses of, and the right to receive Distributions from, the Company, in each case as provided by this Agreement.

“Event of Dissociation” means, with respect to the subject Member, the occurrence of any one of the following:

(i) in the case of a Member who is an individual, the death of such Member, the adjudication of the incompetency of such Member, or the total mental incapacitation of such Member for a continuous period of twelve (12) months or a total of twelve (12) months in any twenty-four (24) month period;

(ii) in the case of a Member who is not an individual, the dissolution or winding-up (or its equivalent), or the termination or revocation of the charter or similar constituent document(s) of such Member;

(iii) the filing or commencement under any provision of federal or state statute of voluntary or involuntary proceedings by or against a Member concerning bankruptcy, insolvency, reorganization, moratorium or similar relief; provided, however, that in the case of involuntary proceedings, an Event of Dissociation shall not be deemed to have occurred until ninety (90) days after such filing without the withdrawal or termination of the proceedings in the Member’s favor;

(iv) a Member’s Membership Interest or any portion thereof becoming subject to sale, attachment or other enforcement proceedings in connection with (A) a judgment obtained against such Member or its Affiliates or (B) any other form of action or proceeding being concluded that would result in the sale or Transfer, either voluntarily or involuntarily, of the Membership Interest or a portion thereof; and

(v) (A) a breach by a Member of the terms and conditions of Section 3.13, or (B) a Member’s material breach of this Agreement after such

breaching Member has been given thirty (30) days' notice to cure by the Company and such Member fails to so cure within such time period, or, if such breach cannot reasonably be cured within such thirty (30) day period, such Member both fails to cure within such period and fails to diligently pursue such cure until accomplished; provided, that, at the election of a Majority, any breach of this Agreement contemplated by this clause (v) may be deemed to not constitute an "Event of Dissociation".

"Fair Value" means the book value of the Company as of the close of business on the last day of the month in which the Event of Dissociation or Cram Down Contribution occurs, which shall be determined within sixty (60) days of the applicable Event of Dissociation or Cram Down Contribution. The book value of the Company shall be determined by the Company's regular certified public accountant and shall be made in accordance with GAAP, and on an accrual basis, but adjusted or determined in accordance with the following:

(i) no allowance of any kind shall be made for goodwill, trade name or any similar intangible asset;

(ii) all accounts payable shall be taken at the face amount, less discounts deductible therefrom, and all accounts receivable shall be taken at the face amount thereof, less discounts to customers and a reasonable reserve for bad debts;

(iii) all machinery, fixtures and equipment shall be taken at the valuation appearing on the books of the Company;

(iv) all unpaid and accrued taxes shall be deducted as liabilities.

"Family Member" means any Person who, at the time of a Permitted Transfer, is the transferring Member's spouse or natural or adoptive lineal ancestor or descendant, or a trust for the exclusive benefit of such Member and/or such spouse and/or one or more of such ancestors and descendants.

"Fiscal Year" for all bookkeeping, financial, accounting and tax matters and records of the Company, means the calendar year.

"GAAP" means United States generally accepted accounting principles in effect from time to time.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except (i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset as determined by the Manager in his good faith and judgment, and (ii) the Gross Asset Value of any Company asset distributed to a Member shall be the gross fair market

value of such asset on the date of distribution as determined by the Manager in his good faith and judgment.

“Guaranteed Payment” means any priority Distribution that qualifies as a guaranteed payment under Section 707(c) of the Code made to a Member in consideration of such Member’s services to the Company or the use of such Member’s capital.

“Indemnified Party” has the meaning set forth in Section 11.14(a) of this Agreement .

“Legal Representative” means any Person who succeeds to such Member’s estate as a result of such Member’s death, legal incompetence, or for any other reason, or who otherwise represents the interests of a Member.

“Liquidation Event” means: (i) the sale, lease, exclusive license or other similar disposition of all or substantially all of the assets of the Company, in one transaction or a series of transactions; (ii) the sale or other Transfer of the Units or merger, consolidation, share exchange, business combination or recapitalization, in one transaction or a series of transactions, that results in the Member(s) that own a majority of the Company’s outstanding Units as of any given date owning less than a majority of the Company’s outstanding Units or of the outstanding equity interests in the surviving or acquiring entity, as applicable; or (iii) any other transaction or series of transactions having a substantially similar effect to those described in clauses (i) or (ii) hereof.

“Liquidator” has the meaning set forth in Section 10.2(a) of this Agreement.

“Majority” means, with respect to Members, Membership Interests and Units, and unless otherwise indicated, Members holding, in the aggregate, more than fifty (50%) percent of the Membership Units then owned by all Members.

“Manager” has the meaning set forth in Section 8.1 of this Agreement.

“Member” means each Person listed from time to time on Schedule 1 of this Agreement, and any transferee of a Member who is admitted to the Company as a Member in accordance with Section 3.2 and Article IX of this Agreement.

“Membership Addendum Agreement” has the meaning set forth in Section 3.16 of this Agreement.

“Membership Interest” means a Member’s aggregate rights in the Company, including, without limitation, a Member’s Economic Interest and right to vote its Membership Interest, in each case to the extent provided for herein. The current Membership Interest of each Member is set forth on Schedule 1, which may be amended from time to time by the Manager to reflect current Membership Interests.

“Minimum Gain” means the aggregate of the amount of income, if any, with respect to each nonrecourse liability of the Company, that would be realized by the Company if it disposed of (in a taxable transaction) property subject to liability in full satisfaction thereof, determined pursuant to Treasury Regulations § 1.704-2(d).

“Net Asset Management Fees” means the Company’s total fee revenue derived from asset management in the prior calendar year less the cost of asset management fees charged to the Company in the prior calendar year.

“Net Losses” means the losses of the Company, if any, determined in accordance with Section 703(a) of the Code under the method of accounting adopted by the Company, and as reported separately or in the aggregate, as appropriate, on the Company’s income tax return filed for federal income tax purposes.

“Net Profits” means the income of the Company, if any, determined in accordance with Section 703(a) of the Code under the method of accounting adopted by the Company, and as reported separately or in the aggregate, as appropriate, on the Company’s income tax return filed for federal income tax purposes.

“Non-Contributing Member” has the meaning set forth in Section 4.2(b) of this Agreement.

“Offer Period” has the meaning set forth in Section 9.4 of this Agreement.

“Offered Units” has the meaning set forth in Section 9.4 of this Agreement.

“Offering Member” has the meaning set forth in Section 9.4 of this Agreement.

“Offering Notice” has the meaning set forth in Section 9.4 of this Agreement.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Payment Method” means payment of the Purchase Price, as defined below, as follows:

(i) The payment of cash or its equivalent in an amount equal to ten (10%) percent of the Purchase Price (the “Down Payment”), within thirty (30) days of the determination of such Purchase Price; and

(ii) The delivery of an unsecured promissory note (the “Note”) of the Company, within thirty (30) days of the later of the determination of Fair Value and the Purchase Price, in the principal amount of the Purchase Price less the Down Payment, and payable in twenty (20) equal consecutive quarterly installments of principal and accrued interest (each, an “Installment”),

commencing on the first day of the first calendar quarter after delivery of the Note. Notwithstanding the foregoing, the amount of principal and accrued interest paid in each Installment shall be limited to the product of (x) Cash Flow for the calendar quarter immediately preceding such quarterly installment, multiplied by (y) the Dissociating Member's Membership Interest percentage at the time of the relevant Event of Dissociation (the "Cash Flow Percentage"), and any such deficit in the payment of an Installment shall be made up in subsequent quarters from Cash Flow Percentages that exceed the standard Installment amount, if any, and any deficit remaining thereafter shall extend the term of the Note.

(iii) The Note shall contain the following terms:

(A) interest shall accrue on all unpaid principal at one percent (1%) above the Wall Street Journal prime rate at the time of the relevant Event of Dissociation; provided, however, that in no event shall the interest rate exceed five percent (5%) per annum;

(B) the Note may be prepaid in whole or in part by the maker at any time without penalty or premium; and

(C) the Note shall become due and payable in full immediately upon the occurrence of a Liquidation Event.

"Permitted Transfer" means (i) any Transfer by a Member to any other Person with the prior written consent of the majority of the Members.

"Person" means any individual, corporation, governmental authority, limited liability company, partnership, joint venture, trust, unincorporated association, or other entity or any agency or instrumentality of any entity.

"Proportionate Share" has the meaning set forth in Section 3.12 of this Agreement.

"Purchase Price" means the product of a Dissociating Member's Membership Interest multiplied by the Fair Value of the Company.

"Regulatory Allocations" has the meaning set forth in Section 5.7 of this Agreement.

"Remaining Members" means all of the Members at the time of a Transfer, or proposed Transfer, and/or an Event of Dissociation, other than the Member who is the subject of the applicable Transfer and/or Event of Dissociation.

“Reserve” means a segregated amount of funds set aside by the Company in a given period for future operating expenses and/or capital expenditures.

“ROFO Party” has the meaning set forth in Section 9.4 of this Agreement.

“Tax Distribution” has the meaning set forth in Section 6.1 of this Agreement.

“Third Party” has the meaning set forth in Section 9.8(f) of this Agreement.

“Transfer” means, as a noun, any voluntary or involuntary sale, assignment, gift, pledge, hypothecation, encumbrance, exchange or other disposition of or transfer to another of any Membership Interest, Economic Interest or other portion of a Membership Interest, and, as a verb, to voluntarily or involuntarily sell, assign, gift, pledge, hypothecate, encumber, exchange or otherwise dispose of or transfer the same to another.

“Treasury Regulations” means all temporary and final regulations promulgated under the Code that from time to time are in effect.

“Unit” shall mean a unit representing a fractional part of a Member’s Membership Interest, with a single percentage point corresponding to a single Unit. Each Member’s Units are set forth on Schedule 1 and shall be expressed on Member certificates in accordance with Section 3.4 of this Agreement.

## ARTICLE II ORGANIZATION AND PRELIMINARY PROVISIONS

**2.1 Effective Date.** This Agreement shall be effective on the date first set forth above.

**2.2 Name.** The name of the Company is **NautilusX, LLC**. All business of the Company shall be conducted in either such name or any properly registered assumed name selected by a Majority, and the Company shall hold all of its property in the name of the Company and/or its assumed name and not in the name or names of any Member or the Manager.

**2.3 Principal Place of Business.** The principal place of business of the Company within the State of New York shall be \_\_\_\_\_, \_\_\_\_\_, New York \_\_\_\_\_. The Company may establish any other places of business as a Majority may from time to time deem advisable.

**2.4 Term.** The term of the Company commenced on the date the Certificate was filed with the Secretary of State of the State of New York, and the Company shall continue in existence indefinitely unless otherwise dissolved in accordance with Article X hereof.

**2.5 Purposes and Powers.** The Company has been formed as a publishing firm. The Company shall have all lawful powers necessary or useful to accomplish such purpose and may engage in any lawful act or activity under the Act consistent with the purpose of the Company. Notwithstanding the foregoing, the Company shall have the authority to engage in any other lawful purpose or purposes permitted by the Act or the laws of any jurisdiction in which the Company may do business to the extent approved by a Majority. In addition, the Company shall have the power to establish and maintain, and shall establish and maintain, appropriate bank and other accounts for all purposes related to the Company, including, but not limited to, the collection of any distributions, dividends, accounts receivable and all other items of revenue and income accruing to the Company. Subject to the rights of the Members pursuant to Section 3.7, the Manager shall have sole access to such accounts and all funds that may, from time to time, exist in such accounts shall be considered property of the Company.

**2.6 Company Status as a Separate Entity.** The Company shall be an entity separate and independent from the Members and the Manager. The Members and the Manager shall take every reasonable measure to ensure the following:

(a) To the extent reasonably practicable, the Company shall be specifically identified in all writings containing its name, including, without limitation, Company invoices, correspondence and checks;

(b) The Company's financial accounts shall be completely separate from those of the Members and the Manager;

(c) There shall be no co-mingling of funds of the Company, the Members and/or the Manager, which shall include a prohibition on (i) the Members or the Manager using any Company funds for their personal purposes, and (ii) the Company using personal funds of the Members or the Manager for its business purposes;

(d) Neither the Members nor the Manager shall represent or imply to any Person that the Members or the Manager are personally liable for any obligation of the Company; and

(e) The failure of the Members and/or the Manager to take all or any particular measures enumerated under this Section 2.6 shall not be construed or deemed to imply that the Company is not, in fact, an entity wholly separate and independent from the Members and the Manager.

**2.7 Method of Accounting.** In computing its taxable income, the Company shall use the cash basis method.

**2.8 Registered Agent for Service of Process.** The registered agent for the Company shall initially be Colby Attorney Services Co., Inc., having a registered address of 111 Washington Avenue, Suite 703, Albany, New York 12210. The registered agent for the

Company may be changed and designated by the Manager, from time to time, in his sole discretion.

### **ARTICLE III MEMBERSHIP**

**3.1 Current Members.** The members of the Company are the Members whose names and addresses are as set forth on Schedule 1 to this Agreement as of the date hereof.

**3.2 Admission of Additional Members.** An additional Person or Persons may be admitted as a Member, after the date of this Agreement, only by both (a) acquiring Units in the Company pursuant to and in compliance with Article IX or pursuant to a Company issuance of new Units in the Company following the date hereof, and (b) obtaining approval of admission as a Member via affirmative vote of the Majority. In addition, such Person or Persons, as a condition of such admission, must agree in writing to be bound by this Agreement and any amendments hereto by executing a Joinder Agreement in substantially the form of Exhibit A attached hereto.

**3.3 Classes of Members; Voting Rights.** The Company shall establish and maintain one class of Members: Each Member shall be entitled to vote on all matters with respect to which Members are entitled to vote under this Agreement, based on the total Units owned by such Member.

**3.4 Certificates.** Membership Interests of the Members shall be evidenced by certificates issued by the Company. Membership Interests shall be expressed in Units on such certificates. The following legend shall be placed upon any membership certificate, or any other document or instrument evidencing ownership of Membership Interests:

THE INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO RESTRICTIONS AS TO ITS SALE, TRANSFER, HYPOTHECATION, ASSIGNMENT OR OTHER DISPOSITION AS SET FORTH IN THE OPERATING AGREEMENT OF NAUTILUSX, LLC AND ANY PURPORTED TRANSFER OR DISPOSITION OF SUCH INTEREST IN VIOLATION OF SUCH RESTRICTIONS SHALL BE VOID.

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. THE UNITS MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR PURSUANT TO AN EXEMPTION THEREFROM, AND THE COMPANY RECEIVES AN

OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS LEGAL COUNSEL THAT SUCH SALE, PLEDGE, ASSIGNMENT OR TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

**3.5 Limitation of Liability.** No Member shall be liable or personally obligated to any third party for any debts, obligations or liabilities of the Company, whether arising in tort, contract or otherwise, solely by reason of being a Member. The Members shall only be liable for their conduct other than as Members as provided by law.

**3.6 Meetings.** All Members may participate in meetings by means of conference telephone or other similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

(a) Annual Meeting. An annual meeting of the Members may be held each year at the option of and at a time and in a place determined by a Majority.

(b) Special Meetings. A meeting of the Members for any purpose or purposes may be called at any time upon the written request of the Manager or a Majority. Such notice shall state the purpose for which such meeting is to be called.

(c) Notice of Meeting. Written notice stating the place, day and hour of a meeting, and indicating that it is being issued by or at the direction of the Person or Persons calling the meeting and stating the purpose or purposes for which the meeting is called, shall be delivered no fewer than ten (10) nor more than thirty (30) days before the date of the meeting.

(d) Record Date. For the purpose of determining the Members entitled to notice of or to vote at a meeting or any adjournment of such meeting, the Members entitled to receive payment of any Distribution and any other determination of Members for any other purpose, the date on which notice of a meeting is mailed or the date on which the resolution declaring Distribution is adopted, as the case may be, shall be the record date for making such a determination. When a determination of Members entitled to vote at any meeting of Members has been made pursuant to this Section 3.6(d), the determination shall apply to any adjournment of the meeting.

(e) Quorum. Members holding not less than a majority of all Units entitled to vote at a meeting, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any meeting of Members, a majority of the Units so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without a requirement of further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a 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 such meeting. At an adjourned meeting at which a quorum shall be present or represented, any business may be

transacted that might have been transacted at the meeting as originally noticed. The Members present at a meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of Members whose absence results in less than a quorum being present.

(f) Manner of Acting. If a quorum is present at any meeting, the vote or written consent of Members holding not less than a majority of the Units entitled to vote at such meeting shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, the Certificate or this Agreement.

(g) Action by Members Without a Meeting. Whenever the Members of the Company are required, or permitted, to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if a written consent or consents in writing, setting forth the action so taken, shall be signed by Members entitled to vote therein having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote therein were present and voted. Such written consent and/or consents shall be delivered to the office of the Company at its principal place of business with attention to the Manager. Prompt notice of the taking of the action without a meeting by less than unanimous written consent of all Members (including the Class B Members) shall be given to each Member who has not consented in writing.

(h) Waiver of Notice. Notice of a meeting need not be given to any Member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such Member.

(i) Proxies. A Member may vote in person or by proxy executed in writing by such Member or a duly authorized attorney-in-fact. Every proxy must be signed by the Member or such attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at any time by the Member executing it, and the authority of the holder of a proxy to act shall be revoked by the incompetence or death of the Member who executed the proxy.

(j) Voting Agreement. An agreement between two or more Members, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the Membership Interests held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them.

**3.7 Information.** Each Member may inspect, during ordinary business hours and at the principal place of business of the Company, the addresses and capital contributions of all Members, the Certificate, this Agreement, the minutes of any meeting of the Members, records reflecting material Company actions by the Manager and any tax returns of the Company for the immediately preceding three (3) Fiscal Years. Members may also inspect any other information regarding the affairs of the Company as is just and reasonable, or as is required to be disclosed to

them by law. In the event a vote or the consent of Units is required under this Agreement, such vote shall be taken and tallied by the Manager, and the results thereof, without the disclosure of names or other identifying information, shall be certified by the Manager and furnished to all Members.

**3.8 Sale of All Assets; Annual Budgets.**

(a) The Members shall have the exclusive right, by the vote or written consent of a Majority, to approve the sale, lease, exchange, or other disposition of all or substantially all of the assets of the Company, or its merger or consolidation with another entity.

(b) The Members shall also have the exclusive right, by the vote or written consent of a Majority, to request and then approve, adopt, disapprove, reject, modify or revise any annual budget of the Company, as such annual budget has been presented to the Members by the Manager. Any such annual budget of the Company so approved or adopted (or revised or modified and thereafter approved or adopted) by the Members shall be deemed the annual budget of the Company binding upon the Company for such given year.

**3.9 Priority and Return of Capital.** No Member shall have priority over any other Member, whether for the return of a Capital Contribution or for Net Profits, Net Losses, or a Distribution; provided, that this Section 3.9 shall not apply to loans or other indebtedness (as distinguished from a Capital Contribution) made by a Member to the Company.

**3.10 Liability of a Member to the Company.** A Member who or which rightfully receives the return of any portion of a Capital Contribution is liable to the Company only to the extent provided in this Agreement or now or hereafter provided by the Act. A Member who or which receives a Distribution made by the Company in violation of this Agreement or made when the Company's liabilities exceed its assets (after giving effect to such Distribution) shall be liable to the Company for the amount by which such Distribution exceeds the excess of the Company's liabilities over its assets.

**3.11 Financial Adjustments.** No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Members may, in their discretion, at the time an additional Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make *pro rata* allocations of loss, income and expense deductions to such additional Member for that portion of the Fiscal Year in which such additional Member was admitted in accordance with the Code.

**3.12 Cross-Indemnity.** To the fullest extent permitted by law, each Member shall indemnify and hold harmless any Company Guarantor (as defined below) against and with respect to the applicable indemnifying Member's Proportionate Share of any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses, and any amounts expended in settlement of any claims to which such Company Guarantor may become subject by reason of (a) having entered into a guarantee (whether of

payment or performance) for the benefit of the Company and (b) said guarantee having been enforced against the Company Guarantor as a consequence of actions or omissions of the Company; provided, that the indemnifying Member shall have no obligation to reimburse, indemnify or hold harmless the Company Guarantor if the indemnifying Member is already responsible for or otherwise making payment with regard to its Proportionate Share of losses, claims, damages, judgment and fines resulting from such Company action or omission. “Company Guarantor” means any Member or member, shareholder, or Affiliate of a Member which has entered into a guarantee (whether of payment or performance) for the benefit of the Company. “Proportionate Share” means that number, expressed as a percentage, that is the quotient of each applicable Member’s Membership Interest, divided by the aggregate Membership Interests held by all Members.

**3.13 Guarantees.** With respect to any commercial loan taken by the Company, at the request of the Company and upon the approval of a Majority, each Member agrees to use reasonable best efforts to personally guarantee such loan, where such guarantees are reasonably required by the lender as a condition to the making of such commercial loan.

**3.14 Spousal Consent.** In order to protect the interests of the Members under this Agreement, as soon as practicable following the execution of this Agreement, each Member who is an individual and married shall deliver to the Company the written consent of such Member’s spouse, substantially in the form attached hereto as Exhibit B. This requirement shall apply to the marriage of a Member subsequent to the effective date hereof, in which case such spousal consent shall be executed and furnished to the Company as soon after such marriage as is practicable.

**3.15 Fiduciary Duties.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on the Manager, any Member or any Affiliate, director, officer, agent or employee of a Member or the Company (collectively, the “Covered Persons”), other than an implied duty of good faith. The Members and the Company hereby waive any and all other fiduciary duties that, absent such waiver, may be implied by law, and in doing so, acknowledge and agree that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members and the Company to replace such other duties and liabilities of such Covered Person. The Members and the Company further agree that such duties and liabilities imposed by this Agreement are manifestly reasonable replacements of such fiduciary duties.

## ARTICLE IV CAPITAL CONTRIBUTIONS

**4.1 Current Capital Contributions.** As of the date of the full execution of this Agreement, the Members have contributed the amount of cash, property and/or services identified in Schedule 1 to this Agreement. The current Capital Contribution made by each Member is the sole and entire consideration for the current Membership Interests in the Company.

**4.2 Capital Calls.**

(a) In addition to the initial Capital Contributions of the Members, the Members shall make additional Capital Contributions, in proportion to their respective Membership Interests, as determined by a vote of a Majority and as from time to time reasonably necessary to pay any operating, capital or other expenses relating to the business of the Company (such additional Capital Contributions, the "Additional Capital Contributions"). Upon request of Members representing at least a Majority, the Company shall deliver to the Members a written notice of the Company's need for the Additional Capital Contributions, which notice shall specify in reasonable detail (i) the purpose for such Additional Capital Contributions, (ii) the aggregate amount of such Additional Capital Contributions, (iii) each Member's share of such aggregate amount of Additional Capital Contributions based upon each such Member's Membership Interest, and (iv) the date (which date shall not be less than ten (10) Business Days from the date that such notice is given) on which such Additional Capital Contributions shall be required to be made by the Members.

(b) If any Member shall fail to timely make, or notifies the other Members that it shall not or cannot make, all or any portion of any Additional Capital Contribution which such Member is obligated to make under Section 4.2(a), then such Member shall be deemed to be a "Non-Contributing Member". The non-defaulting Members (the "Contributing Members") shall be entitled, but not obligated, to loan to the Non-Contributing Member, by contributing to the Company on his or its behalf, all or any part of the amount (the "Default Amount") that the Non-Contributing Member failed to contribute to the Company (each such loan, a "Default Loan"); provided, that such Contributing Members shall have contributed to the Company their own *pro rata* share of the applicable Additional Capital Contribution; provided, further, that if more than one Contributing Member elects to provide the Default Loan such that the aggregate proffered Default Loan is greater than the amount the Non-Contributing Member failed to contribute, the amount of the Default Loan shall be apportioned based on the proportion each Contributing Member's proffered Default Loan bears to the entire proffered Default Loans of all Contributing Members. Each Default Loan shall bear interest (compounded monthly on the first day of each calendar month) on the unpaid principal amount thereof from time to time from the date advanced until repaid, at the lesser of (i) the prime rate for commercial loans plus five percent (5%) per annum or (ii) the maximum rate permitted at law (the "Default Rate"). Each Default Loan shall be recourse solely to the Non-Contributing Member's Membership Interest. Default Loans shall be repaid out of the distributions that would otherwise be made to the Non-Contributing Member under Article VI or Article X, as more fully provided for in Section 4.2(d).

So long as a Default Loan is outstanding, the Non-Contributing Member shall have the right to repay the Default Loan (and interest then due and owing) in whole or in part. Upon the repayment in full of all Default Loans (but not upon their conversion as provided in Section 4.2(c)) made in respect of a Non-Contributing Member (and so long as the Non-Contributing Member is not otherwise a Non-Contributing Member), such Non-Contributing Member shall cease to be a Non-Contributing Member.

(c) At any time after the date twelve (12) months after a Default Loan is made, at the option of the Contributing Members holding a majority of the Default Loan, (i) such Default Loan shall be converted into an Additional Capital Contribution of the Contributing Members in an amount equal to the principal and unpaid interest on such Default Loan as applicable to each Contributing Member pursuant to this Section 4.2(c), (ii) the Non-Contributing Member shall be deemed to have received a distribution, pursuant to Article VI, of an amount equal to the principal and unpaid interest on such Default Loan, (iii) the applicable amount of such distribution shall be deemed paid to each Contributing Member in repayment of the Default Loan, (iv) such amount shall be deemed contributed by each Contributing Member as an Additional Capital Contribution (a “Cram-Down Contribution”), and (v) the Contributing Members’ Capital Accounts shall be increased by, and the Non-Contributing Member’s Capital Account shall be decreased by, an amount equal to the principal and unpaid interest on such Default Loan. A Cram-Down Contribution shall be deemed an Additional Capital Contribution by each applicable Contributing Member making (or deemed making) such Cram-Down Contribution as of the date such Cram-Down Contribution is made or the date on which such Default Loan is converted to a Cram-Down Contribution. At the time of a Cram-Down Contribution, the Membership Interest of each Contributing Member shall be increased based on the ratio that the value of the Cram-Down Contribution bears to the Fair Value of the Company, thereby diluting the Membership Interest of the Non-Contributing Member. Once a Cram-Down Contribution has been made (or deemed made), no subsequent payment or tender in respect of the Cram-Down Contribution shall affect the Membership Interests of the Members, as adjusted in accordance with this Section 4.2(c).

(d) Notwithstanding any other provisions of this Agreement, any amount that otherwise would be paid or distributed to a Non-Contributing Member pursuant to Article VI shall not be paid to the Non-Contributing Member but shall be deemed paid and applied on behalf of such Non-Contributing Member (i) first, to accrued and unpaid interest on all Default Loans (in the order of their original maturity date), (ii) second, to the principal amount of such Default Loans (in the order of their original maturity date) and (iii) third, to any Additional Capital Contribution of such Non-Contributing Member that has not been paid and is not deemed to have been paid.

(e) Notwithstanding the foregoing, if a Non-Contributing Member fails to make its Additional Capital Contribution in accordance with Section 4.2(a), the Contributing Members may, at the option of Contributing Members holding a majority of the Default Loan, following a ten (10) business day notice and cure period for the benefit of the Non-Contributing Member:

- (i) institute proceedings against the Non-Contributing Member to obtain payment of its portion of the Additional Capital Contributions, together with interest thereon at the Default Rate from the date that such Additional Capital Contribution was due until the date that such Additional Capital Contribution is made; or
- (ii) purchase the Membership Interest of the Non-Contributing Member at a price equal to seventy-five percent (75%) of the Fair Value of such Membership Interest, as determined in the reasonable discretion of the Contributing Members holding a majority of the Default Loan.

(f) If a Member is characterized as a Non-Contributing Member, then, so long as the Member remains a Non-Contributing Member, he or it shall forfeit and no longer be entitled to any consent or voting rights granted in this Agreement.

(g) Except as set forth in this Section 4.2, no Member shall be required to make additional Capital Contributions or make loans to the Company.

**4.3 Capital Accounts.** A Capital Account shall be maintained for each Member in accordance with Section 704(b) of the Code and the Treasury Regulations thereunder. Except as otherwise required in the Act, or pursuant to this Agreement, no Member shall be required to restore any portion of a deficit balance in a Capital Account.

**4.4 Withdrawal or Reduction of Capital Contributions.** A Member shall not receive from the Company any portion of a Capital Contribution until all indebtedness, liabilities and obligations of the Company, except any indebtedness, liabilities and obligations to Members on account of their Capital Contributions, have been paid and there remains property of the Company sufficient to pay them. A Member, irrespective of the nature of the Capital Contribution of such Member, has only the right to demand and receive cash in return for such Capital Contribution; provided, however, that the Company may elect to pay consideration other than cash in return for a Capital Contribution, as reasonably required.

**4.5 No Interest on Capital Contributions.** No interest shall be paid by the Company on the Capital Contributions of the Members.

**4.6 Loans from Members.** Nothing in this Agreement, including Section 4.2 hereof, shall be construed as prohibiting a Member from making a loan or loans to the Company, provided that such loan has been recommended and duly authorized by the Manager and approved by a Majority. All such loans shall be repaid in full prior to the return of Capital Contributions to any Member or Members, and such loans shall be given the same priority and status as loans or other indebtedness or liabilities to third parties. Notwithstanding the foregoing, the Company shall be prohibited from accepting any loan from a Member where such loan is available from a commercial lender on conventional terms at an equal or lower rate.

**ARTICLE V**  
**ALLOCATIONS AND ELECTIONS**

**5.1 Allocations.** After giving effect to the allocations described in Sections 5.2 through 5.7 hereof, Net Profits and Net Losses for any Fiscal Year shall be allocated among the Members in such manner that, at the end of such Fiscal Year, the Capital Account of each Member is equal to the respective net amount that would be distributed to such Member if the Company were to (a) liquidate its assets for an amount equal to their Fair Value and (b) distribute the proceeds as if such proceeds were a Distribution being distributed in accordance with Sections 6.1 through 6.3.

**5.2 Certain Book-Ups.** To the extent an adjustment to the adjusted tax basis of any Company asset (a) pursuant to Code Sections 734(b) or 743(b) is required or (b) pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(f) is permitted to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated, as provided in Treasury Regulation §1.704-1(b)(2)(iv)(m), or Treasury Regulation §1.704-1(b)(2)(iv)(g), respectively, as an item of Net Profit (if the adjustment increases the basis of the asset) or Net Loss (if the adjustment decreases such basis) and such Net Profit or Net 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 sections of the Treasury Regulations.

**5.3 Minimum Gain Charge-Back.** If there is a net decrease in Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to and to the extent of an amount equal to such Member's share of the net decrease in Minimum Gain (within the meaning of Treasury Regulations § 1.704-2(g)(2)). The items to be so allocated shall first consist of gains recognized from the disposition of the Company's assets subject to one or more nonrecourse liabilities of the Company to the extent of the decrease in Minimum Gain attributable to the disposition of such items of property and remainder shall consist of a *pro rata* portion of the other items of Company income and gain for that year. This provision is meant to satisfy the minimum gain chargeback requirement contained in Treasury Regulations § 1.704-2(f), and will be interpreted consistently therewith.

**5.4 Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation §1.704-1(b)(2)(ii)(d)(4), (5) or (6) that result in a deficit balance in such Member's Capital Account, items of Company income and gain (including gross income) shall be specially allocated to such Member to the extent required and in the manner specified by Treasury Regulations Sections 1.704-1(b)(2)(ii)(d) in an amount and manner sufficient to eliminate the such deficit balance as quickly as possible. This provision is intended to comply with the qualified income offset requirement in Treasury Regulation §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**5.5 Gross Income Allocation.** If any Member has a deficit balance in such Member's Capital Account at the end of any Fiscal Year which is in excess of the amount the Member is deemed to be obligated to restore under the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), such Member will be specially allocated items of Company income and gain in the amount of such excess as quickly as possible.

**5.6 Offsetting Allocations.** In the event that Net Profits or Net Losses are allocated to one or more Members pursuant to Sections 5.2 through 5.5 above, subsequent Net Profits or Net Losses, to the extent possible, consistent with the Code and applicable Treasury Regulations, will first be allocated (subject to the provisions of Sections 5.2 through 5.5 above) to the Members in a manner designed to result in each Member having a Capital Account balance equal to what it would have been had the original allocation of Net Profits or Net Losses pursuant to Sections 5.2 through 5.5 above not occurred. The Manager will apply this Section 5.6 at such times, and in such manner, and will make allocations under this Section 5.6 among the Members, in such manner as it determines appropriate in order to minimize any economic distortion that might otherwise be caused by allocations made under Sections 5.2 through 5.5 above.

**5.7 Curative Allocations.** The allocations set forth in Sections 5.2 through Section 5.6 above (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulation §1.704-1(b). Notwithstanding any other provisions of this Article V (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other Net Profits and Net Losses and items of income, gain, loss and deduction among Members so that, to the extent possible, the net amount of such allocations of other Net Profits and Net Losses and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

**5.8 Allocations for Tax Purposes.**

(a) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 5.2 hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in a manner and as permitted under Section 704(c) of the Code and the Treasury Regulations thereunder.

(c) Except as provided in Sections 5.8(a) and (b) hereof, for federal, state and local income tax purposes, the income, gains, losses and deductions of the Company shall, for each taxable period, be allocated among the Members in the same manner and in the same

proportion that such items have been allocated among the Members' respective Capital Accounts.

(d) Unless the Code requires otherwise, any Net Profits or Net Losses allocable to a Member whose Membership Interest has been transferred during a Fiscal Year, shall be allocated among the persons who were the holders of such Membership Interest during such Fiscal Year by taking into account their varying interests during the Fiscal Year in accordance with Section 706(d) of the Code and pro-rating in accordance with the length of time during such Fiscal Year that each of these persons was a holder of such Membership Interest.

**5.9 Code Section 754 Election.** In the event of a transfer of all or any part of the interest of a Member or the distribution of securities or other assets in-kind to a Member, the Company shall, upon the request of the Member transferring its interest or receiving a distribution in-kind, or if no such request is made, the Company may, but shall not be required to, elect to adjust the basis of the Company assets pursuant to an election under Section 754 of the Code.

## **ARTICLE VI DISTRIBUTIONS**

**6.1 Distributions.** All Distributions must be within the Manager's and the Company's annual operating budget. The Manager may, as Cash Flow allows and with consideration for the requirements of the annual budget, in the Manager's sole discretion, make Distributions no more frequently than once per Fiscal Year quarter. It shall be the policy of the Company to, and the Manager shall, distribute all available Cash Flow to the Members; provided, that such Distributions shall be with consideration for the requirements of the annual budget. Notwithstanding the foregoing, no Distribution shall be made if, immediately after such Distribution, the Company would have a negative net worth.

**6.2 Tax Distributions.** Subject to Section 6.1 and the availability of sufficient Company funds (as determined by the Manager and in the Manager's sole and absolute discretion), if any income tax is levied upon any Member as a consequence of taxable income of the Company allocated to such Member, the Company shall deliver to such Member a cash, tax gross-up dividend in an amount sufficient to satisfy such income tax (a "Tax Distribution"). Such Tax Distribution shall be made on or before April 15<sup>th</sup> of the year following the fiscal year in which the taxable income of the Company was so allocated.

**6.3 Distributions.** Subject to Sections 6.1 and 6.2, all Distributions made to the Members by the Company shall be made pro rata in accordance with the Units held by such Members at the time of Distribution.

**6.4 Guaranteed Payments and Other Compensation.** The Guaranteed Payments and other compensation that any Member receives from the Company for services, loans and other benefits that such Member provides to the Company shall be as determined from time to

time by a vote of a Majority. Amounts that Members receive as Guaranteed Payments shall not affect the amount of allocations to them of Net Profits and Net Losses or of Distributions.

**6.5 Distributions upon a Liquidation Event.** The net proceeds from a Liquidation Event, after payment of all expenses incident to such Liquidation Event, shall be distributed as follows:

(a) *First*, to the establishment of such Reserves as the Manager deems necessary for the payment of liabilities and other obligations of the Company; and

(b) *Second*, to the Members as if the net proceeds from such Liquidation Event were a Distribution being distributed to the Members in accordance with Sections 6.2 and 6.3 of this Agreement.

**6.6 Offset Against Distributions.** The Company may offset all amounts owing to the Company by a Member against any Distribution to be made to such Member.

## ARTICLE VII TAXES

**7.1. Taxation of the Company.** The Members agree that the Company shall be taxable as a partnership and as partners under the Code for federal income tax purposes, and to the maximum extent possible under the tax laws of each state and the District of Columbia. The provisions of this Agreement shall be construed and applied in such a manner as to ensure full compliance with the provisions of the Code applicable to partnerships and with regulations thereunder. Any Member who shall intentionally or unintentionally cause the Company's election to be taxed as a partnership to be terminated shall be personally liable to the Company and all the Members for all costs, expenses, taxes and any other damages occasioned by such termination.

**7.2. Tax Returns.** The Manager shall cause to be prepared and filed all necessary federal, state and local income tax returns for the Company. Each Member shall furnish to the Manager all pertinent information in its possession relating to Company operations that is necessary or advisable to enable the Company's income tax returns to be prepared and filed.

**7.3. Tax Elections.** The Company shall make the following elections on the appropriate tax returns:

(a) To adopt the calendar year as the Fiscal Year;

(b) To adopt the cash basis method of accounting and keep the Company's books and records on this method for income tax reporting;

(c) To elect to expense and/or amortize the organizational expenses of the Company and the start-up expenditures of the Company under Sections 709(b) and 195 of the Code, respectively; and

(d) Any other election that the Manager may deem appropriate and in the best interests of the Members. None of the Company, the Manager or any Member may make an election for the Company to be excluded from the application of Subchapter K of Chapter 1 of Subtitle A of the Code or any similar provisions of applicable state law, and no provisions of this Agreement shall be interpreted to authorize any such election.

**7.4. Tax Matters Partner.** John Steele shall be the “Tax Matters Partner” of the Company pursuant to Section 6231(a)(7) of the Code, and the Tax Matters Partner shall take any action as may be necessary to cause each other Member to become a “Notice Partner” within the meaning of Section 6223 of the Code. In the event that John Steele is no longer the Tax Matters Partner, John Steele, if he is a Member, shall designate his successor, and if John Steele is no longer a Member, the Tax Matters Partner shall be designated by the consent or vote of a Majority.

(a) The Tax Matters Partner is authorized and required to represent the Company (at the Company’s expense) in connection with all examinations of the Company’s affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things as reasonably required to conduct such proceedings, and the Tax Matters Partner shall reasonably consult with all Members concerning tax matters involving the Company.

(b) The Tax Matters Partner shall have and perform all of the duties required under the Code, including, but not limited to, the ability to make elections under Section 754 of the Code and any other elections which the Tax Matters Partner, in his sole discretion, deems prudent for the Company or its Members.

(c) The Company shall indemnify and reimburse the Tax Matters Partner for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred by the Tax Matters Partner in exercising his rights and duties under this Section 7.4 in connection with any administrative or judicial proceeding in which there were at issue the tax liabilities of the Members or the Company arising out of the transactions contemplated in this Agreement; provided, that such expense, claim, liabilities, losses or damages were not the result of fraud, willful misconduct or gross negligence on the part of the Tax Matters Partner. The taking of any action and the incurrence of any expense by the Tax Matters Partner in his capacity as such in connection with any such proceeding, except to the extent required by law or limited by this Section 7.4, is a matter in the sole and absolute discretion of the Tax Matters Partner and the provisions on limitations of liability of the Manager and indemnification set forth in this Agreement shall be fully applicable to the Tax Matters Partner in his capacity as such.

## ARTICLE VIII MANAGEMENT

**8.1 Manager Management.** The Company shall be a manager-managed limited liability company. It shall be managed by a single manager (the "Manager"). The Manager must be an individual who is either (a) a Member, (b) a shareholder, member or partner of a Member or (c) a shareholder, member or partner of a shareholder, member or partner of a Member.

(a) Designation of the Manager. As long as John Steele is associated with Nautilus, LLC and Nautilusthink, Inc and so long as those entities are Members, he shall have the exclusive right to designate the Manager. In the event that Nautilus, LLC and Nautilusthink, Inc. do not own fifty (50%) percent or more Units, the Manager shall be elected by a Majority.

(b) Officers. The Manager may from time to time appoint one or more officers of the Company, as the Manager in his sole discretion may elect. Each officer appointed by the Manager shall have such title, duties and responsibilities as the Manager may from time to time prescribe.

**8.2 Current Manager.** The current Manager of the Company shall be John Steele, an individual with a mailing address of \_\_\_\_\_  
The current Manager shall serve, in accordance with Section 8.1(a).

**8.3 Management of Company.** Except as otherwise provided in this Agreement, the Manager, in the Manager's sole discretion, shall make all decisions relating to the conduct of the business and internal affairs of the Company, and, except as hereinafter provided, the Manager alone shall have the power and authority to bind the Company with third parties.

(a) General Authority. The Manager shall manage the general business, financial and operational aspects of the Company and, without limiting the foregoing, shall have the following authority and responsibilities, in addition to those as may be specifically determined or required by a vote or the written consent of a Majority:

- (i) Hire and terminate non-Member personnel and staff, and set Non-Member salaries within the Company's annual budget;
- (ii) Preside at all meetings of the Members;
- (iii) Enter into, make and perform contracts and agreements that bind the Company as are necessary and appropriate in the ordinary course of business of the Company;
- (iv) Commence lawsuits and other proceedings;
- (v) Retain attorneys, accountants, and other professionals and agents;

- (vi) Approve the purchase, sale, and/or lease of assets of up to Fifty Thousand Dollars (\$50,000) per year;
- (vii) Establish banking relationships, open bank accounts, and sign checks;
- (viii) Oversee firm accounting and financial reporting;
- (ix) Prior to the commencement of each Fiscal Year, prepare and submit to the Members the Company's annual report, which annual report must contain a budget and must (A) be approved (and, subsequent to such approval, may only be modified) by the vote or written consent of a Majority and (B) not exceed the previous Fiscal Year's annual operating budget by more than five percent (5%) unless additionally approved by the vote or written consent of a Majority;
- (x) Purchase insurance on the business and assets of the Company;
- (xi) Keep and maintain, or cause to be maintained, adequate and correct books and records of accounts and the business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, income, revenues, deductions, expenses, capital, and Capital Accounts;
- (xii) Cause to be deposited all moneys and other valuables in the name and to the credit of the Company with such depositaries as may be designated by the Manager; and
- (xiii) Cause the funds of the Company to be disbursed as the Manager may be properly directed from time to time.

(b) Approval of Voting Members. Without the consent of a Majority, the Manager shall not have the authority to:

- (i) Enter into any transaction not in the ordinary course of business that results in the Company's receipt of cash or other consideration in excess of Fifty Thousand Dollars (\$50,000), including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, recoveries of damage awards and insurance proceeds;
- (ii) Cause the Company to borrow money if after such borrowing the aggregate principal balance of all outstanding loans (excluding accounts payable) taken in a given Fiscal Year exceeds One

Hundred Thousand Dollars (\$100,000) or otherwise incur any single indebtedness greater than Fifty Thousand Dollars (\$50,000);

- (iii) Do any act that could make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;
- (iv) Confess a judgment against the Company that involves potential Company liability in excess of Fifty Thousand Dollars (\$50,000) or a charge of willful misconduct, gross negligence or criminal conduct by the Company;
- (v) Possess property, or assign rights in specific property, for other than a Company purpose;
- (vi) Hold any Company property other than in the name of the Company;
- (vii) Sell, lease, exchange, mortgage, pledge or otherwise transfer any equity interest in the Company or all or substantially all of the assets of the Company;
- (viii) Issue or permit the subscription for any Membership Interest in or Unit of the Company, whether to a current Member or a prospective member;
- (ix) Approve the Company's purchase, sale, or lease of any assets during any calendar year totaling in excess of Fifty Thousand Dollars (\$50,000);
- (x) Provide for any compensation or make any loans to any Member or an Affiliate of a Member;
- (xi) Approve the merger or consolidation of the Company with or into another limited liability company or other business entity, acquire substantially all the assets of another Person, or engage in any substantially similar transaction;
- (xii) Approve of any agreements between the Company on the one hand, and any Member or an Affiliate of a Member on the other hand;
- (xiii) Dissolve, wind-up or liquidate the Company; or
- (xiv) Approve any other Liquidation Event.

**8.4 Appointment and Removal of Manager.** Subject to the Manager designation rights set forth in Section 8.1(a), the Manager may be removed by a Majority at any time.

**8.5 Limitation of Liability.** The Manager shall perform his duties in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a similar position would use under similar circumstances. A Manager who so performs such duties shall not have any liability by reason of being or having been a Manager, and shall not be liable to the Company or any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of the gross negligence or willful misconduct of the Manager. Without limiting the generality of the preceding sentence, the Manager does not in any way guaranty the return of any Capital Contribution to a Member or a profit for the Members from the operations of the Company.

**8.6 Manager Resignations.** The Manager may, without liability, resign from his capacity as Manager upon giving sixty (60) days written notice to the Company.

**8.7 No Exclusive Duty to Company.** The Manager shall not be required to manage the Company as his or her sole and exclusive function, and the Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right pursuant to this Agreement to share or participate in such other business interests or activities or to the income or proceeds derived therefrom. The Manager shall incur no liability to the Company or any Member as a result of engaging in any other business interests or activities.

**8.8 Manager Compensation.** The Manager shall serve without compensation by the Company for the Manager's services, unless such compensation is approved by a Majority.

## **ARTICLE IX TRANSFER OF INTERESTS; DISSOCIATION**

**9.1 General.** Except as expressly permitted under this Agreement (including Sections 9.2, 9.3 and 9.4 below), without the express unanimous written consent of all of the Members, no Member shall Transfer such Member's Membership Interest, Economic Interest or any portion of such Membership Interest. Any Transfer, or attempt to Transfer, in violation of the terms of this Agreement shall be void and ineffective to Transfer any Membership Interest, and shall not bind, or be recognized by or on the books of the Company.

**9.2 Permitted Transfers.** Notwithstanding the provisions of Section 9.1, and subject to the provisions of Sections 9.3 and 9.4 below, each Member shall have the right to make a Transfer that is a Permitted Transfer.

**9.3 Dissociation of a Member.** Notwithstanding the provisions of Section 9.1, upon the occurrence of an Event of Dissociation, any or all of the Members who are Remaining Members shall have the right to purchase the Dissociating Member's Membership Interest in proportions relative to the Membership Interests among the Members who are Remaining Members electing to so purchase, or, alternatively, the Members who are Remaining Members may, by vote of seventy-five percent (75%) of their respective Units, agree that the Company shall purchase some or all of the Dissociating Member's Membership Interest. The foregoing election procedure shall be completed within sixty (60) days of the Event of Dissociation and the determination of Fair Value. The Members and/or the Company electing to purchase shall pay to the Dissociating Member (or the Dissociating Member's Legal Representative), in exchange for the Dissociating Member's Membership Interest, the Purchase Price in accordance with the Payment Method; provided, however, that if, at the time of such purchase, the Dissociating Member (or the Dissociating Member's Legal Representative) has failed to timely make or has not yet made an additional Capital Contribution determined in accordance with Section 4.2(a), the Members and/or the Company electing to purchase shall pay to the Dissociating Member (or the Dissociating Member's Legal Representative), in exchange for the Dissociating Member's Membership Interest, solely the purchase price contemplated by Section 4.2(e)(ii). In the event of a failure to so elect within the sixty (60) day time period above-mentioned, the Company shall pursue dissolution in accordance with and pursuant to Article X hereof.

**9.4 Right of First Refusal.** In addition to Permitted Transfers and Transfers pursuant to Section 9.3, each Member shall have the right to seek offers to purchase some or all of such Member's Units from any other Person (a "ROFO Party"). Upon a Member (the "Offering Member") receiving a legally binding *bona fide* written offer from a ROFO Party to purchase some or all of such Offering Member's Units (the "Offered Units"), the Offering Member shall first offer, by written notice (the "Offering Notice") to all of the Remaining Members who are Members to sell all of the Offered Units to such Remaining Members. The Offering Notice shall set forth all terms and conditions of sale that would be material to a prospective purchaser, including the price per Unit, and shall be accompanied by a copy, verified to be true, of the written offer from the ROFO Party. The price contained in the Offering Notice shall be the same price as the price contained in the offer from the ROFO Party and any terms or conditions shall be no less favorable to the Remaining Members than those contained in the ROFO Party's offer; provided, however, that if, at the time the Offering Notice is given, the Offering Member has not yet made an Additional Capital Contribution determined in accordance with Section 4.2(a), the price contained in the Offering Notice shall be (i) the price contained in the offer from the ROFO Party less (ii) the amount of the unpaid Additional Capital Contribution. The Remaining Members shall have thirty (30) days from service upon them of the Offering Notice to accept the offer (the "Offer Period"). Unless the Remaining Members unanimously agree otherwise, each such Remaining Member shall be entitled to purchase a portion of the Offered Units in proportion to the number of Units among all such Remaining Members; the Remaining Members may also unanimously elect that the Company purchase some or all of the Offered Units. In the event that the Remaining Members fail to elect to purchase all of the Offered Units before the expiration of the Offer Period, the Offering Member may Transfer to the ROFO Party all or that portion of Offered Units that are unpurchased by Remaining Members (as applicable) at any time within thirty (30) days after expiration of the

Offer Period strictly in accordance with the terms of the ROFO Party's offer; provided, however, that if, at the time the Offering Notice is given, the Offering Member has not yet made an Additional Capital Contribution determined in accordance with Section 4.2(a), the Transfer to the ROFO Party shall not become effective until such Additional Contribution is made. If such Transfer is not consummated within thirty (30) days after expiration of the Offer Period, all of the provisions of this Section 9.4 will again apply to the Offered Units as if no Transfer had been contemplated and no Offering Notice given.

**9.5 Restriction on Transfers.** Notwithstanding anything to the contrary contained herein, no Member shall Transfer all or any portion of or any interest or rights in such Member's Membership Interest if the Transfer will:

- (a) require registration of the Membership Interest under any federal or state security laws;
- (b) result in the termination of the Company pursuant to Code Section 708;
- (c) result in the Company being subject to the Investment Company Act of 1940, as amended; or
- (d) cause or result in the breach of any agreement binding upon the Company or of then applicable rules and regulations of an governmental authority having jurisdiction over the Company or such Transfer.

**9.6 Transfer Requirements.** Notwithstanding anything contained herein to the contrary, no Transfer (including a Permitted Transfer) shall become effective until the following requirements have been met:

- (a) The Members have received written notice of the Transfer and, exercising reasonable discretion, have approved the form and substance of the Transfer instrument;
- (b) The transferee shall have filed with the Company a written acknowledgement agreeing to be bound by all of the terms and conditions of this Agreement, including any amendments hereto, in the form of the Joinder Agreement in substantially the form attached hereto as Exhibit A;
- (c) The transferee has delivered to the Company such transferee's taxpayer ID number and initial tax basis in the Transferred Membership Interest; and
- (d) The transferee has paid, or acknowledged the obligation to pay, as the Company may determine, all reasonable expenses incurred by the Company in connection with such Transfer, including the costs of any amendments to this Agreement.

**9.7 Capital Call Obligations.** Notwithstanding anything else to the contrary contained herein, in the event a Transfer is effected pursuant to this Agreement the applicable

transferee shall, in addition to its general obligation to be bound by all terms and conditions of this Agreement, remain explicitly bound by and liable for any additional Capital Contribution for which the applicable transferor is liable or for which such transferor would become liable but for the underlying Transfer. Such transferee, upon the Transfer becoming effective, shall expressly assume such transferor's obligations and duties pursuant to Section 4.2 of this Agreement and shall become expressly subject to the purchase and dilution rights of any Contributing Members as further contemplated by Section 4.2. For the avoidance of doubt, this Section 9.8 shall apply to all Transfers, whether a Permitted Transfer, a Transfer pursuant to an Event of Dissociation or otherwise.

## **9.8 Drag-Along Rights.**

(a) Participation. At any time during which Nautilus, LLC and Nautilisthink, Inc. own 50% or more of the Class A Units or other equity of the Company (calculated on a fully-diluted basis), if Nautilus, LLC and Nautilisthink, Inc. (the "Dragging Member") proposes to consummate or to have the Company consummate (as applicable), in one transaction or a series of related transactions, (i) a sale, directly or indirectly, to a Third Party (as defined below) of at least a majority of the outstanding Units or other equity interests in the Company, (ii) a merger, consolidation, recapitalization or reorganization of the Company or other similar transaction involving a Third Party requiring the consent or approval of the Members or (iii) the sale of all or substantially all of the Company's assets to a Third Party (a "Drag-along Sale"), the Dragging Member shall have the right, after delivering the Drag-along Notice in accordance with Section 9.8(c) and subject to compliance with Section 9.8(d), to require that the other Members (the "Drag-along Members") participate in such Drag-along Sale on the terms and conditions set forth in this Section 9.8.

(b) Sale of Units; Sale of Assets. Subject to compliance with Section 9.8(d):

(i) If the Drag-along Sale is structured as a sale of Units or other equity of the Company, then each Drag-along Member shall sell the applicable number and type of Units or other equity interests equal to the product obtained by multiplying, for each class or type of Unit or equity interest, (A) the number of applicable outstanding Units or equity interests held by such Drag-along Member by (B) a fraction (1) the numerator of which is equal to the number of applicable outstanding Units or equity interests that the Dragging Member proposes to sell in the Drag-along Sale and (2) the denominator of which is equal to the number of applicable outstanding Units or equity interests held by the Dragging Member at such time; and

(ii) If the Drag-along Sale is structured as a sale of all or substantially all of the consolidated assets of the Company or as a merger, consolidation, recapitalization, or reorganization of the Company or other similar transaction requiring the consent or approval of the Members, then notwithstanding anything to the contrary in this Agreement, the Drag-along Members shall (A) vote (in person, by proxy or by written consent, as requested) or consent with respect to all

of their Membership Units or equity interests, if applicable, in favor of the Drag-along Sale (and any related actions necessary to consummate such sale) and otherwise consent to and raise no objection to such Drag-along Sale and such related actions, and (B) refrain from taking any action to exercise, and shall take all actions to waive, any dissenters' appraisal or other similar rights that they may have in connection with such transaction.

(c) Drag-along Notice. The Dragging Member shall exercise its rights pursuant to this Section 9.8 by delivering a written notice (the "Drag-along Notice") to the Drag-along Members no later than ten (10) business days prior to the execution and delivery by all of the parties thereto of the definitive agreement entered into with respect to the Drag-along Sale. The Drag-along Notice shall make reference to the Dragging Member's rights and obligations hereunder and shall describe in reasonable detail:

- (i) the name(s) of the Third Party engaged in the Drag-Along Sale;
- (ii) the proposed date, time and location of the closing of the Drag-along Sale; and
- (iii) the proposed amount of consideration in the Drag-along Sale, including, if applicable, the purchase price per Unit of each applicable class of Units or other equity of the Company to be sold and the other material terms and conditions of the Drag-along Sale.

(d) Conditions of Sale. The obligations of the Drag-along Members in respect of a Drag-along Sale under this Section 9.8 is subject to the satisfaction of the following condition:

- (i) The consideration to be received by the Drag-along Members shall be the same form and amount of consideration to be received by the Dragging Member per Unit or equity interest and the terms and conditions of such sale shall be the same as those upon which the Dragging Member sells his Units or other equity in the Company; provided, that reasonable distinction and discrepancy in deal terms and conditions and amount/form of consideration, as determined in the sole and absolute discretion of the Dragging Member, shall be permitted to account for any economic and voting right differences between the Units contemplated by this Agreement.

(e) Cooperation. Each Drag-along Member shall take all actions as may be reasonably necessary to consummate the Drag-along Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by the Dragging Member. In furtherance of the foregoing, each Drag-along Member shall execute the applicable purchase agreement (and any related ancillary agreements entered into by the Dragging Member in connection with the Drag-along Sale) and make or provide the same purchase price adjustments,

escrows and other obligations as the Dragging Member makes or provides in connection with the Drag-along Sale.

(f) Fees and Expenses. The fees and expenses of the Dragging Member incurred (either directly or indirectly) in connection with a Drag-along Sale and for the benefit of all Drag-along Members, to the extent not paid or reimbursed by the Company or the Third Party, shall be shared by the Dragging Member and all the Drag-along Members on a *pro rata* basis, based on the aggregate consideration received by each such Member in the Drag-along Sale.

(g) Consummation of Sale. The Dragging Member shall have sixty (60) days following the date of the Drag-along Notice in which to consummate the Drag-along Sale, on the terms set forth in the Drag-along Notice (which sixty (60)-day period may be extended for a reasonable time not to exceed one hundred eighty (180) days, in the aggregate, to the extent the Dragging Member believes reasonably necessary). If, at the end of such period, the Dragging Member has not completed the Drag-along Sale, the Dragging Member may not then exercise its rights under this Section 9.8 without again fully complying with the provisions of this Section 9.8.

(h) Definition of Third Party. For the purposes of this Article VI, “Third Party” means any person who, immediately prior to the contemplated transaction, is not directly or indirectly controlled by Nautilus, LLC or Nautilusthink, Inc..

## **ARTICLE X DISSOLUTION**

**10.1. Dissolution**. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

- (a) the date on which the Company is to dissolve, if set forth in the Certificate;
- (b) the vote of Members holding at least seventy-five percent (75%) of the Units;
- (c) the sale of all or substantially all of the Company’s assets;
- (d) following the occurrence of a Liquidation Event, the vote of Members holding at least a majority of the Membership Interests; or
- (e) The occurrence of an Event of Dissociation and the election of the Company and the Members not to purchase the Dissociating Member’s Membership Interest, as set forth in Section 9.3.

**10.2. Winding Up**.

(a) Upon the dissolution of the Company for any reason, the Manager or a liquidating agent or committee appointed by the Manager shall act as a liquidating agent (such Person, in such capacity, the “Liquidator”) and shall commence to wind-up the affairs of the Company and to liquidate the Company’s assets. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Company assets pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions. The Liquidator shall also have full right and unlimited discretion to ensure the Company’s compliance with applicable rules of the United States Internal Revenue Service and the tax administration of any applicable state or municipality relating to entity dissolutions.

(b) The Liquidator shall have all rights and powers with respect to the assets and liabilities of the Company as required or reasonably necessary to effectuate the dissolution, liquidation and termination of the Company pursuant to this Article X. Notwithstanding the foregoing, a Liquidator which is not the Member shall not be deemed to be a member of the Company and shall not be deemed to have any interest in the Company similar to that of a member.

(c) During liquidation and winding-up of the Company, the Company’s assets shall be applied in the following order of priority:

(i) first, to pay the costs and expenses of the winding up, liquidation and termination of the Company;

(ii) second, to creditors of the Company, in the order of priority provided by law, as required to make payment with respect to all of the Company’s debts and liabilities (including to the Members and their Affiliates, if applicable);

(iii) third, to establish Reserves reasonably adequate to meet any and all contingent or unforeseen liabilities or obligations of the Company; provided, however, that at the expiration of such period of time as the Liquidator may deem advisable, the balance of such reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided; and

(iv) fourth, to the Members as if such distribution of assets were a Distribution being distributed in accordance with Sections 6.1 and 6.3.

**10.3. Cancellation of Certificate.** Upon completion of the winding-up and liquidation of the assets of the Company as provided in this Article X, the Company shall be terminated and the Liquidator shall cause the cancellation of the Certificate, the filing of a certificate of dissolution and statement of termination with the New York Division of Revenue and Enterprise Services and the cancellation of all qualifications and registrations of the Company as a foreign limited liability company in jurisdictions other than the State of New York and shall take all other actions as may be necessary or advisable to terminate the Company.

**10.4. Deficit Capital Account.** Upon a liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, Distributions, allocations and other adjustments for all Fiscal Years, including the Fiscal Year in which such liquidation occurs), the Members shall have no obligation to make any Capital Contributions, and the negative balance of any Capital Account shall not be considered a debt owed by Members to the Company or to any other Person for any purpose.

**10.5. Nonrecourse to Other Members.** Except as provided by applicable law or as expressly provided in this Agreement, upon dissolution, each Member shall receive a return of his or her Capital Contributions solely from the assets of the Company. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return any Capital Contribution of any Member, such Member shall have no recourse against any other Member.

**10.6. Termination.** Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

## **ARTICLE XI GENERAL PROVISIONS**

**11.1. Entire Agreement.** This Agreement contains the complete and entire agreement among the Parties concerning its subject matter, and replaces all earlier agreements or understandings among them, whether written, oral or implied concerning its subject matter.

**11.2. Amendments; Assignment.** No amendment of this Agreement shall be valid unless in writing and made upon the written consent or vote of at least seventy-five percent (75%) of the Membership Interests of all Members, and specifically referring to each provision of this Agreement being amended. Except as permitted pursuant to Article IX hereof, no Member may assign in whole or in part its Membership Interest (including its Economic Interest or right to vote its Membership Interest) without the prior written consent of the Company and all other Members.

**11.3. Applicability of the Act.** Except as otherwise expressly provided in this Agreement and in the Certificate, all provisions of the Act as now in effect, and as amended from time to time, shall apply to this Agreement as if fully incorporated herein.

**11.4. Notices.** Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if: (a) delivered personally to the Party to whom such notice, demand or other communication is directed, (b) sent by a nationally recognized overnight courier service, addressed to the Member or the Company at his or her address set forth on Schedule 1 to this Agreement, or (c) delivered by email (delivery receipt requested), with physical copy thereof sent on the same day of such electronic delivery via nationally recognized overnight courier service, to the email address and

physical address (as applicable) of the Member or Company set forth on Schedule 1 to this Agreement. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given when personally delivered, or if sent by overnight courier service, one (1) day after delivery to such service, or if sent by email, upon the day so transmitted. A Party may change the Party's address for the purposes of this provision at any time upon notice given in accordance with the terms of this provision.

**11.5. Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. Words such as "herein", "hereinafter", "hereof", "hereby", and "hereunder", when used with reference to this Agreement, refer to this Agreement as a whole unless the context otherwise clearly requires.

**11.6. Waiver.** No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all Members and specifically referring to each such right or remedy being waived.

**11.7. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

**11.8. Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws.

**11.9. Resolution of Disputes.** All disputes, claims or controversies of any nature among the Parties, including the Company, arising out of or relating to this Agreement (a "Dispute"), shall be settled, if possible, by friendly negotiation of the Parties.

(a) **Mediation.** If settlement of a Dispute cannot be reached by such negotiation, then such Dispute shall be resolved by non-binding mediation. The Parties to the Dispute shall agree upon a single mediator, or, in the event they are unable to so agree, such mediator shall be selected under the auspices of the American Arbitration Association. The mediation proceedings shall be governed by the Commercial Rules of the American Arbitration Association under its Rules of Practice and Procedures in effect, and, unless the Parties agree otherwise, shall be conducted in New York County, New York. The Parties agree to conclude such mediation within thirty (30) days of the selection of a mediator. A Party may terminate the mediation at any time after the first session by delivering written notice of the same to the other Parties.

(b) **Litigation.** If the Dispute is not resolved by mediation in accordance with Section 11.9(a), any Party to the applicable Dispute may commence legal proceedings in a court of competent jurisdiction within the County of New York, New York, or the United States District Court for the Southern District of New York, which Courts shall have exclusive jurisdiction to hear and resolve all disputes by or among the Parties arising out of or relating to this Agreement. With respect to such litigation, the Parties do hereby absolutely and unconditionally WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY. In addition, the substantially prevailing Party or Parties shall be entitled to recover from the non-prevailing Party or Parties, all costs and expenses, including reasonable attorneys' fees, incurred in such litigation.

**11.10. Captions.** Captions in this Agreement are for convenience only, and shall be deemed irrelevant in construing its provisions.

**11.11. Entire Agreement.** The Certificate and any amendments thereto, and all Schedules and Exhibits referred to in this Agreement, are hereby incorporated in this Agreement and made an integral part of it. This Agreement, with the foregoing incorporated documents, constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements, discussions, undertakings and commitments (whether written or oral) with respect thereto. There are no other oral understandings, terms or conditions, and no Party has relied upon any representation, express or implied, not contained in this Agreement.

**11.12. Binding Effect.** Except as otherwise provided in this Agreement, every term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, heirs, personal representatives and assigns.

**11.13. Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Manager or a Majority, to execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

**11.14 Indemnification by the Company.**

(a) The Company shall indemnify and hold harmless the Manager as well as each Member and their respective Affiliates, stockholders, members, managers, directors, officers, employees and agents (as applicable) (each, an "Indemnified Party") from and against any loss, expense, damage or injury suffered or sustained by them, by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company or in furtherance of the interests of the Company (irrespective of the capacity in which a Member or such a Person acts), including any judgment, award, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claims are based were not a result of fraud, gross

negligence or willful misconduct by such Indemnified Party. Any indemnification pursuant to this Section 11.14 shall only be from the assets of the Company.

(b) Expenses (including attorneys' fees) incurred by an Indemnified Party in a civil or criminal action, suit or proceeding shall be paid by the Company in advance of the final disposition of such action, suit or proceeding; provided, that if an Indemnified Party is advanced such expenses and it is later determined that such Indemnified Party was not entitled to indemnification with respect to such action, suit or proceeding, then such Indemnified Party shall reimburse the Company for such advances.

(c) No amendment, modification or deletion of this Section 11.14 shall apply to or have any effect on the right of any Indemnified Party to indemnification for or with respect to any acts or omissions of such Indemnified Party occurring prior to such amendment, modification or deletion.

**IN WITNESS WHEREOF**, the Parties have duly signed and executed this Agreement effective as of the date first above written.

**THE COMPANY:**

**NAUTILUSX, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: **Manager**

**[The signatures of the Members are contained on separate Counterpart Signature Pages for each class of members appended to this Agreement.]**

**COUNTERPART SIGNATURE PAGE OF MEMBERS TO  
THE OPERATING AGREEMENT OF  
NAUTILUSX, LLC**

The undersigned, by executing this counterpart signature page of the Operating Agreement of NautilusX, LLC (the "Company"), effective \_\_\_\_\_, 2015, as may be amended from time to time (the "Operating Agreement"), hereby acknowledges and represents to the Company, that the undersigned has received, read and fully understands the rights, obligations, terms and conditions set forth in the Operating Agreement. The undersigned hereby approves and adopts the Operating Agreement as a Member of the Company.

IN WITNESS WHEREOF, the undersigned has executed this counterpart signature page of the Operating Agreement as of \_\_\_\_\_, 2015.

Current Number of Units:

Current Membership Interest in the Company: \_\_\_\_\_%

**NAUTILUSX, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1**

**Members/Capital Contributions/Membership Interests as of \_\_\_\_\_, 2015**

<b><u>Member Name</u></b>	<b><u>Capital Account Balance</u></b>	<b><u>Membership Interest as Percentage of Units)*</u></b>	<b><u>Overall Membership Interest (No. of Units)</u></b>
NautilusThink, Inc.	[\$_____]	60%	% Units
AAAS	\$	40%	% Units

**EXHIBIT A**

**Joinder Agreement**

**JOINDER AGREEMENT FOR ADDITIONAL MEMBERS**

Reference is hereby made to the Operating Agreement of NautilusX, LLC, dated \_\_\_\_\_, 2015, (as amended from time to time, the “Operating Agreement”), entered into by and among NautilusX, LLC, a limited liability company organized under the laws of the State of New York with a principal place of business located at \_\_\_\_\_ (the “Company”), an individual with an address at \_\_\_\_\_ and \_\_\_\_\_ (the “Members” thereto). Capitalized terms used, but not defined, herein shall have the respective meaning set forth in the Operating Agreement.

Pursuant to and in accordance with Section 3.2 of the Operating Agreement, the undersigned hereby agrees that upon the execution of this Joinder Agreement, it shall become a party to the Operating Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Operating Agreement as though an original Party thereto and shall be deemed to be a Member of the Company for all purposes thereof, notwithstanding the fact the undersigned must still be admitted to the Company as a Member pursuant to the terms and conditions of the Operating Agreement. The undersigned hereby acknowledges that it shall expressly accede to and assume all obligations and liabilities of the transferor Member from whom the undersigned, directly or indirectly, acquired its Units and/or Membership Interest. Such assumed obligations and liabilities include any obligation or duty to make a Capital Contribution pursuant to Section 4.2 of the Operating Agreement.

Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Operating Agreement.

*[signature page follows]*

IN WITNESS WHEREOF, the transferee Member has executed this Agreement as of \_\_\_\_\_, \_\_\_\_\_.

**[TRANSFEREE MEMBER]**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**Acknowledged:**

**NAUTILUSX, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

