EXHIBIT A

NEXT MANAGEMENT, LLC

AMENDED AND RESTATED

OPERATING AGREEMENT

Dated as of _____ ___, 2008

THE COMPANY INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH COMPANY INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

Table of Contents

Table of Contents

Table of Contents

NEXT MANAGEMENT, LLC
AMENDED AND RESTATED OPERATING AGREEMENT

This AMENDED AND RESTATED OPERATING AGREEMENT, dated as of _____ __, 2008, is entered into by and among the Members.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

"Additional Member" means a Person admitted to the Company as a Member pursuant to Article X.

"Adjusted Capital Account Deficit" means with respect to any Capital Account as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Person's Capital Account balance shall be

(i) reduced for any items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6), and

(ii) increased for any amount such Person is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to minimum gain).

"Affiliate" of any Person means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question.

"Agreement" means this Amended and Restated Operating Agreement of Next Management, LLC.

"Articles" means the Company's articles of organization as filed with the Department of State of the State of New York.

"Assignee" means a Person to whom a Member has attempted to Transfer a Company Interest, but who has not become a Substituted Member pursuant to Section 9.7(a).

"Base Rate" means, on any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the "prime rate" at large U.S. money center banks.

"Board" has the meaning set forth in Section 5.1.

"Book Value" means, with respect to any Company property, the Company's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g).

"Capital Account" means the capital account maintained for a Member pursuant to Section 3.2.

"Capital Contribution" means any cash, cash equivalents, promissory obligations or the Fair Market Value of other property which a Member contributes to the Company pursuant to Section 3.1.

"Claxon" means Claxon, Inc., a New York corporation.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company" means Next Management, LLC, a New York limited liability company, established in accordance with the New York Act, as such limited liability company may be from time to time constituted, and including its successors.

"Company Interest" means the interest of a Member in Profits, Losses and Distributions. Following the Initial Recapitalization, all Company Interests shall be represented by Units.

"Consolidated EBITDA" shall mean, for any period, the net income or loss of the Company and its Designated Affiliates for such period determined on a consolidated basis in accordance with GAAP plus (a) without duplication and to the extent deducted in determining such consolidated net income, the sum of (i) consolidated interest expense for such period, (ii) provision for taxes based on income or profits of the Company and its Affiliates, (iii) all amounts attributable to depreciation and amortization (including amortization of intangibles (including goodwill)) (excluding amortization expense attributable to a prepaid cash item that was paid in a prior period), (iv) any extraordinary, unusual or non-recurring, and in each case non-cash, charges or losses for such period (but excluding any such non-cash charge in respect of an item that increased consolidated net income in a prior period (to the extent of such increase)), (v) fees and expenses incurred during such period in connection with the transactions contemplated by the Purchase Agreement and the Prior Purchase Agreement, (vi) the amount of advisory, management or similar fees and transaction fees paid (or payable but accrued) to any member of the Golden Gate Group and (vii) the amount of the bonuses described in Section 4.1(d) hereof paid (or payable but accrued), and minus (b) without duplication and to the extent included in determining such consolidated net income, the sum of (i) any cash disbursements during such period that relate to non-cash charges or losses added to consolidated net income pursuant to clause (a)(iv) or (a)(vii) of this paragraph, or accrued fees added to consolidated net income pursuant to clause (a)(vii) of this paragraph, in each case in any prior period, and (ii) any extraordinary, unusual or non recurring gains for such period, all determined on a consolidated basis in accordance with GAAP.

"Designated Affiliates" means each of Next Management SARL, a company formed pursuant to the laws of France, Next Milano SRL, a company formed pursuant to the laws of Italy, and Next Management London Limited, a company formed pursuant to the laws of England and Wales.

"Distribution" means each distribution made by the Company to a Member, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; provided that none of the following shall be a Distribution: (a) any recapitalization or exchange of securities of the Company, or any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding securities, (b) any distribution made by the Company pursuant to Sections 4.1(b) or (d) hereof, (c) any fees that are required to be and are paid to any member of the Golden Gate Group, (d) the Initial Recapitalization or (e) any Excluded Tax Distribution.

"Election Period" has the meaning set forth in Section 9.11(c).

"Equity Securities" means (i) Units or other equity interests in the Company (including other classes or groups thereof having such relative rights, powers and duties as may from time to time be established by the Board, including rights, powers and/or duties senior to existing classes and groups of Units and other equity interests in the Company), (ii) obligations, evidences of indebtedness or other securities or interests convertible or exchangeable into Units or other equity interests in the Company and (iii) warrants, options or other rights to purchase or otherwise acquire Units or other equity interests in the Company.

"Event of Withdrawal" means the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company.

"Excess EBITDA" means, with respect to any Fiscal Year of the Company, the amount (if any) by which Consolidated EBITDA exceeds $6,000,000.

"Excluded Tax Distribution" has the meaning set forth in Section 4.1(c).

"Exempt Transfer" means (i) a Transfer among the members of the Golden Gate Group or any investment vehicle managed by Golden Gate Private Equity, Inc. or to an employee or director of the Company or any of its Subsidiaries, (ii) a Transfer to any stockholder, member, or partner of any member of the Golden Gate Group (and any subsequent Transfers among such stockholders, members, or partners), or (iii) any exchange of Units with the Company; provided that this Agreement will continue to apply to the Golden Gate Units after any Transfer pursuant to clauses (i), (ii) or (iii) above and provided that the requirements of Sections 9.1(c) are also satisfied.

"Fair Market Value" means, with respect to any asset or equity interest, its fair market value determined according to Article XIII.

"Family Group" means, with respect to any Person, such Person's spouse, parents, siblings and descendants (whether by birth or adoption) and any trust or other estate planning vehicle established solely for the benefit of such Person and/or such Person's spouse

and/or such Person's descendants (by birth or adoption), parents, siblings or dependents, or any charitable trust the grantor of which is such Person and/or a member of such Person's Family Group.

"Fiscal Period" means any interim accounting period within a Taxable Year established by the Board and which is permitted or required by Code Section 706.

"Fiscal Year" means the Company's annual accounting period established pursuant to Section 7.2.

"GAAP" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"Golden Gate Group" means Golden Gate Private Equity, Inc., its Affiliates and any of their respective managed investment funds and portfolio companies (excluding the Company and its Subsidiaries) and their respective partners, members, directors, employees, stockholders, agents, any successor by operation of law (including by merger) of any such Person, and any entity that acquires all or substantially all of the assets of any such Person in a single transaction or series of related transactions.

"Golden Gate Majority Member" means Claxon.

"Golden Gate Units" means (i) any Units acquired by any member of the Golden Gate Group and (ii) any equity securities issued or issuable directly or indirectly with respect to the Units referred to in clause (i) by way of Unit dividend or Unit split or in connection with a combination of Units, recapitalization, merger, consolidation or other reorganization, or in each case, any comparable transaction.

"Governmental Entity" means the United States of America or any other nation, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"Indemnified Person" has the meaning set forth in Section 6.4(a).

"Independent Third Party" means any Person who is not a member of the Golden Gate Group.

"Initial Recapitalization" has the meaning set forth in Section 3.1(b).

"Insider" means any officer, director, employee, Member or other Affiliate of the Company or any individual related by marriage or adoption to any such Person or any entity in which any such Person owns any beneficial interest.

"IPO" has the meaning set forth in Section 12.7(a).

"Losses" means items of Company loss and deduction determined according to Section 3.2.

"Manager" has the meaning set forth in Section 5.1.

"Maximum Marginal Rate" has the meaning set forth in Section 4.1(c).

"Member" means each of the members named on Schedule A attached hereto and any Person admitted to the Company as a Substituted Member or Additional Member; provided a person shall remain a Member hereunder only so long as such Person is shown on the Company's books and records as the holder of one or more Units or other Company Interests.

"Minimum Gain" means the partnership minimum gain determined pursuant to Treasury Regulation Section 1.704-2(d).

"New York Act" means the New York Limited Liability Company Law, Chapter 34 of the New York Consolidated Laws, as it may be amended from time to time, and any successor to the New York Act.

"Non-Compete Agreement" has the meaning set forth in Section 4.1(f)(i).

"Other Members" means the Members that are not a members of the Golden Gate Group.

"Owner" means with respect to each Person which is (i) a corporation or any similar entity, each shareholder and each Owner of such shareholder; (ii) a limited liability company or any similar entity, each member and each Owner of such member; (iii) a partnership (whether limited or general) or similar entity, each partner and each Owner of such partner; and (iv) a trust or any similar entity, each beneficiary who has the legal right (or whose spouse has the present legal right) to demand a distribution of the trust's interest and each Owner of such beneficiary or such beneficiary's spouse (whether in such beneficiary's capacity as a beneficiary, trustee or otherwise and whether by revocation or amendment of such trust or otherwise).

"Participating Members" has the meaning set forth in Section 9.2(b).

"Person" means an individual or a corporation, partnership, limited liability company, trust, unincorporated organization, association or other entity.

"PHC" means Partnership Holding Corp., a New York corporation.

"Pre-Closing Tax Period" has the meaning set forth in Section 4.1(b).

"Pre-Closing Taxes" has the meaning set forth in Section 4.1(b).

"Preemptive Holder" has the meaning set forth in Section 9.11(a).

"Preemptive Rights Notice" has the meaning set forth in Section 9.11(b).

"Prior Owners" means, collectively, Lorenzo Pedrini, Giorgio Santambrogio, and Paolo Roberti and Claxon Participations, S.A., a company formed pursuant to the laws of Luxembourg.

"Prior Purchase Agreement" means that certain Securities Purchase Option Agreement, dated June 20, 2008, by and among Wilcor, PHC, the Company and the Prior Owners.

"Profits" means items of Company income and gain determined according to Section 3.2.

"Proposed Purchaser" has the meaning set forth in Section 9.2(a).

"Public Sale" means any sale of equity securities of the Company (other than rights to acquire equity securities of the Company) to the public pursuant to an offering registered under the Securities Act or to the public through a broker, dealer or market maker pursuant to the provisions of Rule 144 adopted under the Securities Act.

"Purchase Agreement" means that certain Securities Purchase Agreement, dated as of October __, 2008, by and among Wilcor, PHC, Faith Kates, Joel Wilkenfeld, the Company and the members of the Golden Gate Group listed on the signatures pages thereto.

"Regulatory Allocations" has the meaning set forth in Section 4.5.

"Requisite Holders" has the meaning set forth in Section 12.8(a).

"Sale Notice" has the meaning set forth in Section 9.2(b).

"Sale of the Company" means (i) any sale or transfer by the Company of all or substantially all of its assets, (ii) any consolidation, merger or reorganization of the Company with or into any other entity or entities as a result of which any Person or group other than the members of the Golden Gate Group, Wilcor, PHC, Faith Kates and Joel Wilkenfeld obtains possession of voting power (under ordinary circumstances) to elect a majority of the surviving entity's board of directors or (iii) any Approved Sale.

"Securities Act" means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

"Securities and Exchange Commission" means the United States Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"Solvent Reorganization" means any solvent reorganization of the Company or any Subsidiary of the Company, including by merger, consolidation, recapitalization, transfer or sale of equity interests or assets, or contribution of assets and/or liabilities, or any liquidation, exchange of securities, conversion of entity, migration of entity, formation of new entity, or any other transaction or group of related transactions (in each case, with the Company or one of its Affiliates (which Affiliates may include an entity formed for the purpose of such Solvent Reorganization)), in which:

(i) all Members that are holders of the same class or series of Units are offered the same consideration in respect of such class or series of Units;

(ii) the pro rata indirect economic interests of the Members in the business of the Company, relative to each other and all other holders, directly or indirectly, of Equity Securities in the Company, are preserved; and

(iii) the rights of the Members under this Agreement are preserved in all material respects (it being understood by way of illustration and not limitation that the relocation of a covenant or restriction from one instrument to another shall be deemed a preservation if the relocation is necessitated, by virtue of any law or regulation applicable to the Company following such Solvent Reorganization, as a result of any change in jurisdiction or form of entity in connection with the Solvent Reorganization; provided that such covenants and restrictions are retained in instruments that are, as nearly as practicable and to the extent consistent with business and transactional objectives, equivalent to the instruments in which such restrictions or covenants were contained prior to the Solvent Reorganization).

"Straddle Period" means any taxable period that includes (but does not end on) the date hereof.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a "Subsidiary" of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term "Subsidiary" refers to a Subsidiary of the Company.

"Substituted Member" means a any transferee of Units that is admitted as a Member to the Company pursuant to Section 9.7(a).

"Tag-Along Notice" has the meaning set forth in Section 9.2(b).

"Tax Matters Partner" has the meaning given to such term in Section 6231 of the Code.

"Taxable Year" means the Company's accounting period for federal income tax purposes determined pursuant to Section 7.2.

"Transfer" has the meaning set forth in Section 9.1(a).

"Transfer Date" has the meaning set forth in Section 9.7(a).

"Treasury Regulations" means the income tax regulations promulgated under the Code, as amended.

"Unit" means a Company Interest of a Member in the Company representing a fractional part of the Company Interests of all Members; provided that any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement and the Company Interest represented by such class or group of Units shall be determined in accordance with such relative rights, powers and duties.

"Unitholder" means a holder of Units.

"Wilcor" means The Wilcor Group, Inc., a New York corporation.

ARTICLE II

ORGANIZATIONAL MATTERS

2.1 **Formation of Company.** The Company was formed on October 25, 2004 pursuant to the provisions of the New York Act.

2.2 **Operating Agreement.** The Members hereby execute this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the New York Act. The Members hereby agree that during the term of the Company set forth in Section 2.6 the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the New York Act. On any matter upon which this Agreement is silent, the New York Act shall control. No provision of this Agreement shall be in violation of the New York Act and to the extent any provision of this Agreement is in violation of the New York Act, such provision shall be void and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement; provided, however, that where the New York Act provides that a provision of the New York Act shall apply "except as provided in the operating agreement" or words of similar effect, the provisions of this Agreement shall in each instance control.

2.3 **Name.** The name of the Company shall be "Next Management, LLC". The Board in its sole discretion may change the name of the Company at any time and from time to time. Notification of any such change shall be given to all of the Members. The Company's business may be conducted under its name and/or any other name or names deemed advisable by the Board.

2.4 **Purpose.** The purpose and business of the Company shall be any business which may lawfully be conducted by a limited liability company formed pursuant to the New York Act.

2.5 **Principal Office; Registered Office.** The principal office of the Company shall be at 15 Watts Street, New York, New York, 10013, or such other place as the Board may from time to time designate. The Company may maintain offices at such other place or places as the Board deems advisable. Notification of any such change shall be given to all of the Members.

2.6 **Term.** The term of the Company commenced upon the filing of the Articles in accordance with the New York Act and shall continue in existence until termination and dissolution thereof in accordance with the provisions of Article XII.

2.7 **No State-Law Partnership.** The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.7, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE III

CAPITAL CONTRIBUTIONS

3.1 **Members; Units.**

(a) The Members of the Company and the Company Interests of each Member (expressed as a percentage of the total Company Interests outstanding) as of the date of the execution of this Agreement are set forth on Schedule A attached hereto.

(b) Immediately following the closing of the transactions contemplated by the Purchase Agreement, the Company shall issue to each of the Members set forth on Schedule A their pro rata portion (in proportion to the percentage of Company Interests held by each Member) of an aggregate of 100,000 Units in exchange for the Company Interests set forth on Schedule A (the "Initial Recapitalization"). The amount of the Capital Contribution made with respect to each Unit shall be deemed to be $380.95. Following the Initial Recapitalization, all Company Interests shall be represented by Units.

(c) The Members of the Company and the Units to be held by each Member following the Initial Recapitalization are set forth on Schedule A attached hereto. The Board shall cause Schedule A to be updated from time to time to reflect any Transfers of Units permitted hereunder, the issuance of additional Units pursuant to the authority of the Board under Section 5.1 and the admission of Substituted Members and Additional Members.

(d) All Units issued hereunder shall be uncertificated unless otherwise determined by the Board.

(e) Each Member who is issued Units by the Company pursuant to the authority of the Board pursuant to Section 5.1 shall make the Capital Contributions to the Company determined by the Board pursuant to the authority of the Board pursuant to Section 5.1 in exchange for such Units.

(f) No Member shall be required to make any additional Capital Contributions to the Company, except as otherwise agreed between the Company and such Member.

3.2 **Capital Accounts.**

(a) The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the discretion of the Board), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulation Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

(b) For purposes of computing the amount of any item of Company income, gain, loss or deduction to be allocated pursuant to Article IV and to be reflected in the Capital Accounts, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); provided that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Section 705(a)(l)(B) or Code Section 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for federal income tax purposes.

(ii) If the Book Value of any Company property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e) or (f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in

determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

3.3 **Negative Capital Accounts.** No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

3.4 **No Withdrawal.** No Member shall be entitled to withdraw any part of such Member's Capital Contribution or Capital Account or to receive any distribution from the Company, except as expressly provided herein.

3.5 **Loans From Members.** Loans by Members to the Company shall not be considered Capital Contributions. If any Member shall advance funds to the Company in excess of the amounts required hereunder to be contributed by such Member to the capital of the Company, the making of such advances shall not result in any increase in the amount of the Capital Account of such Member. The amount of any such advances shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

ARTICLE IV

DISTRIBUTIONS AND ALLOCATIONS

4.1 **Distributions.** The Company shall make distributions to its Members as specified in this Section 4.1.

(a) [Intentionally Deleted.]

(b) To the extent that the Company has not indemnified Claxon, within five business days after written demand therefor, for any Damages (as such term is defined in the Prior Purchase Agreement) described in Section 12.2(iii), (iv) or (v) or Section 13.1(c) of the Prior Purchase Agreement (including any Pre-Closing Taxes), the Company shall make a cash distribution to Claxon in an amount equal to the amount of any such Damages. "Pre Closing Taxes" shall have the meaning ascribed thereto in the Prior Purchase Agreement as in effect as of the date hereof, including any Pre Closing Taxes with respect to the Redemption Plan set forth in Section 7.1 of the Prior Purchase Agreement. No distribution shall be made under Sections 4.1(d), (e) or (f) until all amounts required to be distributed to Claxon pursuant to this Section 4.1(b) have been paid in full.

(c) The Company shall, subject to (i) any restrictions contained in the financing agreements to which the Company or any of its Subsidiaries is a party and (ii) having available cash (after setting aside appropriate reserves), distribute to each Member within 75 days after the close of each Taxable Year (or at such earlier times and in such amounts as to enable such Member to pay estimated income tax liabilities) cash in an amount equal to the product of (A) the Maximum Marginal Rate (as defined below) and (B) the excess of the cumulative taxable income, if any, for such Taxable Year allocated to such Member pursuant to Section 4.4 over the cumulative taxable losses for all prior Taxable Years allocated to such Member pursuant to

Section 4.4 to the extent that such losses are available to be carried forward to offset such taxable income (or would have been available if they had not been previously used to offset other taxable income, including income from sources other than the Company) and to the extent that such taxable losses have not previously been used to offset taxable income that would have otherwise caused Distributions to be made under this Section 4.1(c). Any Distribution to a Member pursuant to this Section 4.1(c) shall be treated as an advance Distribution under Section 4.1(e), and shall be offset against subsequent Distributions that such Member would otherwise be entitled to receive pursuant to Section 4.1(e); provided, however, that to the extent any distribution to a Member pursuant to this Section 4.1(c) is attributable to income allocated to a Member as a result of any distribution made to such Member pursuant to Section 4.1(b) or pursuant to this proviso (an "Excluded Tax Distribution"), such Excluded Tax Distribution shall not be treated as an advance Distribution under Section 4.1(e) or be treated as a Distribution for any other purpose under this Agreement. The "Maximum Marginal Rate" means the maximum marginal federal, state and local income tax rate (taking into account the deductibility of state and local income taxes for federal income tax purposes) applicable to the Member (or its partners or stockholders, if applicable) with the highest marginal income tax rate of any Member for the Taxable Year in question, as determined by the Board in its sole discretion. No distribution shall be made under Sections 4.1(d), (e) or (f) until the entire amount of distributions required to be made under this Section 4.1(c) have been paid in full.

(d) Subject to (i) Sections 4.1(b) and (c), (ii) any restrictions contained in the financing agreements to which the Company or any of its Subsidiaries is a party, and (iii) having available cash (after setting aside appropriate reserves), the Company shall make monthly cash distributions (with an annual true-up of such distributions to reflect final annual results promptly following the completion of the Company's audited financial statements for each Fiscal Year of the Company) to the following Members in the following amounts:

(i) so long as Wilcor remains a Member, a distribution to Wilcor equal to 5% of the operating income of the Company and its Affiliates, determined on a consolidated basis;

(ii) so long as PHC remains a Member, a distribution to PHC equal to 5% of the operating income of the Company and its Affiliates, determined on a consolidated basis; and

(iii) so long as any member of the Golden Gate Group remains a Member, a distribution to the holders of the Golden Gate Units (allocated among them based on the number of Units held by each member of the Golden Gate Group) equal to 8% of the operating income of the Company and its Affiliates, determined on a consolidated basis.

No distribution shall be made under Sections 4.1(e) or (f) until the entire amount of the distributions required to be made under this Section 4.1(d) have been paid in full.

(e) Subject to (i) Sections 4.1(b), (c) and (d), (ii) any restrictions contained in the financing agreements to which the Company or any of its Subsidiaries is a party, (iii) having available cash (after setting aside appropriate reserves) and (iv) the restrictions set forth in Section 5.2, the Board shall (and may, in the discretion of Board, elect to make other

Distributions) make monthly Distributions (with quarterly and annual true-ups of such distributions to reflect final quarterly and annual results promptly following the completion of the Company's quarterly and audited financial statements for each fiscal quarter and Fiscal Year, respectively, of the Company) under this Section 4.1(e) equal to 65% of the undistributed net profits of the Company (taking into account all other distributions previously made or required to be made under this Section 4.1), trued up to an 80% level on a quarterly basis, with the remaining 20% of the undistributed net profits distributed following completion of the relevant Fiscal Year as part of the annual true-up described above. Subject to Section 4.1(f), each Distribution made pursuant to this Section 4.1(e) shall be made to the Unitholders (in proportion to the number of Units held by each Unitholder).

(f) Notwithstanding the foregoing provisions of Section 4.1(e), the amount actually distributed to each Member in connection with any Distribution made pursuant to Section 4.1(e) shall be subject to adjustment as set forth in this Section 4.1(f). For the purposes of this Section 4.1(f), a Fiscal Year will not be deemed to be completed until the audited financial statements of the Company for such Fiscal Year have been completed.

(i) If, as of the date of any Distribution pursuant to Section 4.1(e), the aggregate (cumulative) amount of the Excess EBITDA for each completed Fiscal Year of the Company subsequent to the date of this Agreement is less than (x) the aggregate amount paid to the Prior Owners by the Company pursuant to that certain Non-Compete Agreement, dated as of the date hereof (the "Non-Compete Agreement"), by and among the Company, the Designated Affiliates and the Prior Owners, minus (y) the aggregate amount by which prior Distributions to the Members have been reduced pursuant to this Section 4.1(f)(i), plus (z) the total amount by which prior Distributions to the Members have been increased pursuant to Section 4.1(f)(ii), then:

(A) the amount of such shortfall shall reduce the amount of Distributions that the holders of Golden Gate Units would have otherwise been entitled to receive pursuant to Section 4.1(e) (in proportion to the number of Units held by each member of the Golden Gate Group) until the aggregate amount of reductions made pursuant to this Section 4.1(f)(i)(A) total $2,000,000; and

(B) the balance of such shortfall shall reduce the amount of Distributions that the Other Members would have otherwise been entitled to receive pursuant to Section 4.1(e) (in proportion to the number of Units held by each Other Member).

(ii) If, as of the date of any Distribution pursuant to Section 4.1(e), the aggregate (cumulative) amount of the Excess EBITDA for each completed Fiscal Year of the Company subsequent to the date of this Agreement is greater than (x) the aggregate amount theretofore paid to the Prior Owners by the Company pursuant to the Non-Compete Agreement, minus (y) the aggregate amount by which prior Distributions to the Members have been reduced pursuant to Section 4.1(f)(i), plus (z) the total amount by which prior Distributions to the Members have been increased pursuant to this Section 4.1(f)(ii), then:

(A) the amount of such excess shall increase the amount of Distributions to be received by the Other Members pursuant to Section 4.1(e) (in proportion to the number of Units held by each Other Member) until the aggregate amount of increases made pursuant to this Section 4.1(f)(ii)(A) equals the aggregate amount of reductions to Distributions to the Other Members pursuant to Section 4.1(f)(i)(B); and

(B) the balance of such excess shall increase the amount of Distributions to be received by the holders of Golden Gate Units pursuant to Section 4.1(e) (in proportion to the number of Units held by each member of the Golden Gate Group) until the aggregate amount of such increases made pursuant to this Section 4.1(f)(ii)(B) equals the aggregate amount of reductions to Distributions to the holders of Golden Gate Units pursuant to Section 4.1(f)(i)(A).

Any distributions pursuant to this Section 4.1(f)(ii) shall be paid in priority to any amounts pursuant to Section 4.1(e).

(iii) Notwithstanding the foregoing provisions of this Section 4.1(f), in the case of a liquidating distribution pursuant to Section 12.2 and Section 12.3, the provisions of Section 4.1(f)(i) and Section 4.1(f)(ii) shall not apply to such distribution, and instead:

(A) the amount of distributions to be received by the Other Members in pursuant to Section 4.1(e) shall be increased (in proportion to the number of Units held by each Other Member) by the aggregate amount of reductions to Distributions to the Other Members pursuant to Section 4.1(f)(i)(B); and

(B) the amount of distributions to be received by the holders of Golden Gate Units pursuant to Section 4.1(e) shall be increased (in proportion to the number of Units held by each member of the Golden Gate Group) by the aggregate amount of reductions to Distributions to the holders of Golden Gate Units pursuant to Section 4.1(f)(i)(A).

(g) Each distribution shall be made to the Persons shown on the Company's books and records as Members as of the date of such Distribution; provided, however, that any transferor and transferee of Units may mutually agree as to which of them should receive payment of any distribution under this Section 4.1.

4.2 **Allocations**. Except as otherwise provided in Section 4.3, Profits and Losses for any Fiscal Year shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year, the sum of (i) the Capital Account of each Member, (ii) such Member's share of Minimum Gain (as determined according to Treasury Regulation Section 1.704-2(g)) and (iii) such Member's partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)) shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were to (i) liquidate the assets of the Company for an amount equal to their Book Value and (ii) distribute the proceeds of liquidation pursuant to Section 12.2.

4.3 **Special Allocations.**

(a) Losses attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulation Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4). This Section 4.3(a) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(b) Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated to each Member based upon each such Member's pro rata interest in a theoretical Distribution (equivalent to the amount of such nonrecourse deductions) made in accordance with Section 4.1(e) immediately prior to such allocation. Except as otherwise provided in Section 4.3(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Member shall be allocated Profits for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(f). This Section 4.3(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) If any Member that unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Sections 4.3(a) and 4.3(b) but before the application of any other provision of this Article IV, then Profits for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 4.3(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) Profits and Losses described in Section 3.2(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(e) If, and to the extent that, any Member is deemed to recognize any item of income, gain, loss, deduction or credit as a result of any transaction between such Member and the Company pursuant to Code Sections 1272-1274, 7872, 483, 482 or any similar provision now or hereafter in effect, and the Board determines that any corresponding Profit or Loss of the Company should be allocated to the Member who recognized such item in order to reflect such Member's economic interests in the Company, then the Board may so allocate such Profit or Loss.

4.4 **Tax Allocations.**

(a) Except as provided in Sections 4.4(b), (c) and (d), the income, gains, losses, deductions and credits of the Company will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; except that if any such allocation is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Code Section 704(c) 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 Book Value.

(c) If the Book Value of any Company asset is adjusted pursuant to Section 3.2(b), subsequent allocations of items of taxable 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 Book Value in the same manner as under Code Section 704(c).

(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as determined by the Board taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) Allocations pursuant to this Section 4.4 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other Company items pursuant to any provision of this Agreement.

4.5 **Curative Allocations.** The allocations set forth in Section 4.3 (the "Regulatory Allocations") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the Company or make Company distributions. Accordingly, notwithstanding the other provisions of this Article IV, but subject to the Regulatory Allocations, income, gain, deduction, and loss shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other Profit and Loss (and such other items of income, gain, deduction and loss) among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero. In addition, if in any Taxable Year or portion thereof there is a decrease in partnership minimum gain, or in partner nonrecourse debt minimum gain, and application of the minimum gain chargeback requirements set forth in Section 4.3(a) or Section 4.3(b) would cause

a distortion in the economic arrangement among the Members, the Members may, if they do not expect that the Company will have sufficient other income to correct such distortion, request the Internal Revenue Service to waive either or both of such minimum gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such minimum gain chargeback requirements.

4.6 **Indemnification and Reimbursement for Payments on Behalf of a Member.** If the Company is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity) that is specifically attributable to a Member or a Member's status as such (including federal withholding taxes, state personal property taxes, and state unincorporated business taxes), then such Person shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). The Board may offset distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 4.6. A Member's obligation to make contributions to the Company under this Section 4.6 shall survive the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 4.6, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 4.6, including instituting a lawsuit to collect such contribution with interest calculated at a rate equal to the Base Rate plus three percentage points per annum (but not in excess of the highest rate per annum permitted by law).

ARTICLE V

MANAGEMENT

5.1 **Authority of Board.** Except for situations in which the approval of the Members is specifically required by this Agreement and for situations in which the approval of the holders of not less than a majority of the Golden Gate Units or the approval of the holders of not less than a majority of the Units held by the Other Members is specifically required by Section 5.2 below, (i) all management powers over the business and affairs of the Company shall be exclusively vested in a board of managers (the "Board") and (ii) the Board shall conduct, direct and exercise full control over all activities of the Company. Each member of the Board is referred to herein as a "Manager." Without limiting the generality of the foregoing, but subject to any situations in which the approval of the Members is specifically required by this Agreement and subject to any situations in which the approval of the holders of not less than a majority of the Golden Gate Units or the approval of the holders of not less than a majority of the Units held by the Other Members is specifically required by Section 5.2 below, (x) the Board shall have sole and complete discretion in determining whether to issue Equity Securities, the number of Equity Securities to be issued at any particular time, the purchase price for any Equity Securities issued, and all other terms and conditions governing the issuance of Equity Securities and (y) the Board may in its sole and complete discretion enter into, approve, and consummate any merger, consolidation, sale of all or any part of its assets, Approved Sale or other extraordinary or business combination or divestiture transaction, and execute and deliver on behalf of the Company or the Members any agreement, document and instrument in connection therewith (including amendments, if any, to this Agreement or adoptions of new constituent documents) without the approval or consent of any Member (and without in any way limiting or

otherwise impairing the authority of the Board, it being agreed that such grant of authority to the Board shall not be deemed to be an implied waiver by any Member of the right to challenge any such action taken by the Board as a breach of any duty owed to such Member). The Managers shall be the "managers" of the Company for the purposes of the New York Act.

5.2 **Limits on Authority of Board.**

(a) Notwithstanding anything contained in this Agreement to the contrary, the Board shall not take any of the following actions without first obtaining the approval of the holders of not less than a majority of the Golden Gate Units:

(i) make any Distributions pursuant to Section 4.1(e), other than mandatory Distributions of undistributed net profits as described in Section 4.1(e);

(ii) issue or repurchase any Units or other Equity Securities, except as required by Section 3.1(b);

(iii) effect an IPO;

(iv) effect any merger, consolidation, recapitalization, reorganization, reclassification or similar transaction affecting the Company or any Subsidiary of the Company, except as required by Section 3.1(b);

(v) effect any sale or Transfer of all or substantially all of the assets of the Company or any Subsidiary of the Company, or effect any sale or Transfer of the equity interests of any Subsidiary of the Company (whether effected by merger, consolidation, recapitalization, reorganization, reclassification or similar transaction);

(vi) file of any petition by or on behalf of the Company or any of its Subsidiaries seeking relief under any bankruptcy, insolvency or other similar law;

(vii) effect the dissolution, liquidation, winding up or reorganization of the Company or any Subsidiary of the Company;

(viii) amend the governing documents, such as charters, bylaws or operating agreements of any Subsidiary of the Company;

(ix) enter into any agreement or transaction with any Insider of the Company, other than those in effect as of the date hereof;

(x) delegate any of the Board' authority to any Person, designate any person as executive officer of the Company, or remove any person as an executive officer of the Company;

(xi) designate any committee of the Board or delegate of any of the Board's authority to any such committee;

(xii) materially increase the compensation or other benefits of any executive officer of the Company or any Subsidiary of the Company or adopt or modify any material benefit plans for employees of the Company or any Subsidiary of the Company;

(xiii) select or remove the principal auditors of the Company;

(xiv) amend, restate, modify, supplement or otherwise vary in any respect the terms and conditions of the Prior Purchase Agreement or the Non-Compete Agreement;

(xv) make any payment with respect to bonuses or other contingent compensation in excess of $50,000 to any employee, officer, Manager or Member (or any former employee, officer, manager or member) of the Company (excluding, for the avoidance of doubt, any amounts paid in respect of bona fide obligations to models and other fashion talent); or

(xvi) approve or cause the Company or any of its Subsidiaries or Designated Affiliates to enter into any agreement with respect to any of the foregoing.

(b) Notwithstanding anything contained in this Agreement to the contrary, the Board shall not increase the compensation payable to GGC Administration, LLC under the terms of that certain Advisory Agreement, dated as of the date hereof, between the Company and GGC Administration, LLC without first obtaining the approval of the holders of not less than a majority of the Units held by the Other Members.

(c) Notwithstanding anything in this Agreement to the contrary, the Company may not terminate the employment of either of the Co-Presidents of the Company without the unanimous approval of the Board (other than the approval of the Co-President of the Company (or his or her designee pursuant to Section 5.4) whose employment status is at issue).

5.3 **Actions of the Board.** The Board may act (i) through meetings and written consents pursuant to Section 5.6 and (ii) through any Person or Persons to whom authority and duties have been delegated pursuant to Section 5.7.

5.4 **Composition.**

(a) The Board shall consist of four Managers. The following persons shall be appointed to the Board:

(i) One Manager, who shall initially be Joel Wilkenfeld, shall be appointed by Joel Wilkenfeld, provided that upon the death or permanent disability of Joel Wilkenfeld, such Manager shall be appointed by Faith Kates;

(ii) One Manager, who shall initially be Faith Kates, shall be appointed by Faith Kates, provided that upon the death or permanent disability of Faith Kates, such Manager shall be appointed by Joel Wilkenfeld; and

(iii) Two Managers, who shall initially be David Dominik and Stefan Kaluzny, shall be appointed by the Golden Gate Majority Member. The Golden Gate Majority Member agrees that it shall not permit any person appointed by the Golden Gate Majority Member who is then serving as a Manager of the Company to serve as a member of the board of directors or equivalent governing body of any of the competing businesses set forth on Annex 1 hereto.

The aforementioned Persons entitled to designate Managers pursuant to Sections 5.4(a)(i) through 5.4(a)(iii) above are intended third party beneficiaries of the aforementioned Sections of this Agreement.

(b) The removal from the Board (with or without cause) of any Manager designated under Section 5.4(a)(i) through 5.4(a)(iii) above shall be at the written request of the Person or Persons with the right to designate such Manager, but only upon such written request and under no other circumstances.

(c) In the event that any Manager designated under Section 5.4(a) above ceases for any reason to serve as a Manager, the resulting vacancy on the Board shall be filled by a Manager appointed by the Person entitled to designate such Manager pursuant to Section 5.4(a).

(d) The rights and obligations set forth in this Section 5.4 shall continue until the first to occur of (i) the consummation of an IPO and (ii) the consummation of an Approved Sale.

5.5 **Proxies.** A Manager may vote at a meeting of the Board or any committee thereof either in person or by proxy executed in writing by such Manager. A telegram, telex, cablegram or similar transmission by the Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Manager shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 5.5. Proxies for use at any meeting of the Board or any committee thereof or in connection with the taking of any action by written consent shall be filed with the Board, before or at the time of the meeting or execution of the written consent as the case may be. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the majority of the Board who shall decide all questions concerning the qualification of voters, the validity of the proxies and the acceptance or rejection of votes. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and that the proxy is coupled with an interest. Should a proxy designate two or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

5.6 **Meetings, etc.**

(a) Meetings of the Board and any committee thereof shall be held at the principal office of the Company or at such other place as may be determined by the Board or such committee. A majority of the Managers, present in person or through their duly authorized attorneys-in-fact, shall constitute a quorum at any meeting of the Board. Business may be conducted once a quorum is present. Regular meetings of the Board shall be held on such dates and at such times as shall be determined by the Board. Special meetings of the Board may be called by a majority of all of the Managers (or, in the case of a special meeting of any committee of the Board, by a majority of all of the members thereof) on at least 24 hours' prior written notice to the other Managers, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Board or any committee at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Manager as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Board or any committee thereof may be taken by vote of the Board or any committee at a meeting of the Managers thereof or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by all of the Managers serving on the Board or, in the case of a committee, all of the Managers serving on such committee. Prompt notice of the action so taken without a meeting shall be given to those Managers who have not consented in writing. A meeting of the Board or any committee may be held by conference telephone or similar communications equipment by means of which all individuals participating in the meeting can be heard.

(b) Each Manager shall have one vote on all matters submitted to the Board or any committee thereof (whether the consideration of such matter is taken at a meeting, by written consent or otherwise). The affirmative vote (whether by proxy or otherwise) of members of the Board holding a majority of the votes of all members of the Board shall be the act of the Board. Except as otherwise provided by the Board when establishing any committee, the affirmative vote (whether by proxy or otherwise) of members of such committee holding a majority of the votes of all members of such committee shall be the act of such committee.

(c) The Company shall pay the reasonable out-of-pocket expenses incurred by each Manager in connection with attending the meetings of the Board and any committee thereof (unless such expenses shall have been paid or are required to be paid by any other Person). Except as otherwise provided in the immediately preceding sentence or elsewhere in this Agreement, the Managers shall not be compensated for their services as members of the Board.

5.7 **Delegation of Authority**. Subject to Section 5.2, the Board may, from time to time, delegate to one or more Persons (including any Manager, officer of the Company or other Person, and including through the creation and establishment of one or more committees) such authority and duties as the Board may deem advisable, provided that the Board may not delegate substantially all of its powers to any committee without the consent of all of the Managers serving on the Board. In addition, the Board may assign titles (including, without limitation, chairman, chief executive officer, president, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such

Persons. Any number of titles may be held by the same Manager or other individual. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Board, subject to the terms of any written employment agreements between the Company and such officers or agents, if any. Any delegation pursuant to this Section 5.7 may be revoked at any time by the Board in its sole discretion.

5.8 **Limitation of Liability.**

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, no Manager or any of such Manager's Affiliates shall be liable to the Company or to any Member for any act or omission performed or omitted by such Manager in its capacity as a member of the Board pursuant to authority granted to such Person by this Agreement; provided that, except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to such Person's gross negligence, willful misconduct or knowing violation of law or for any present or future breaches of any representations, warranties or covenants by such Person or its Affiliates contained herein or in the other agreements with the Company. The Board may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and no Manager or any of such Manager's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the Board (so long as such agent was selected in good faith and with reasonable care). The Board shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Board in good faith reliance on such advice shall in no event subject the Board or any Manager thereof to liability to the Company or any Member.

(b) Whenever this Agreement or any other agreement contemplated herein provides that the Board shall act in a manner which is, or provide terms which are, "fair and reasonable" to the Company or any Member, the Board shall determine such appropriate action or provide such terms considering, in each case, the relative interests of each party to such agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable United States generally accepted accounting practices or principles.

(c) Whenever in this Agreement or any other agreement contemplated herein the Board is permitted or required to take any action or to make a decision in its "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, the Board shall be entitled to consider such interests and factors as it desires, provided that the Board shall act in good faith.

(d) Whenever in this Agreement the Board is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, the Board shall act under such express standard and, to the extent permitted by applicable law, shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, and, notwithstanding anything contained herein to the contrary, so long as the Board acts in good faith, the resolution, action or terms so made, taken or provided by the Board shall not constitute a breach of this Agreement or any other agreement contemplated

herein or impose liability upon the Board, any Manager thereof or any of such Manager's Affiliates.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF MEMBERS

6.1 **Limitation of Liability.** Except as provided in this Agreement or in the New York Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member or Manager shall be obligated personally for any such debts, obligations or liabilities solely by reason of being a Member or acting as a Manager of the Company. Except as otherwise provided in this Agreement, a Member's liability (in its capacity as such) for Company obligations, liabilities and Losses shall be limited to the Company's assets; provided that a Member shall be required to return to the Company any distribution made to it in clear and manifest accounting or similar error. The immediately preceding sentence shall constitute a compromise to which all Members have consented within the meaning of the New York Act. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the New York Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

6.2 **Lack of Authority.** No Member in its capacity as such (other than in its capacity as a Manager) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditures on behalf of the Company. The Members hereby consent to the exercise by the Board and the Managers of the powers conferred on them by law and this Agreement.

6.3 **No Right of Partition.** No Member shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

6.4 **Indemnification.**

(a) Subject to Section 4.6, the Company hereby agrees to indemnify and hold harmless any Person (each an "Indemnified Person") to the fullest extent permitted under the New York Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment, substitution or replacement), against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such Person (or one or more of such Person's Affiliates) by reason of the fact that such Person is or was a Member or is or was serving as a Manager, officer, employee or other agent of the Company or is or was serving at the request of the Company as a manager, officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; provided that (unless the Board otherwise consents) no

Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's or its Affiliates' gross negligence, willful misconduct or knowing violation of law. Expenses, including attorneys' fees, incurred by any such Indemnified Person in defending a proceeding related to any such indemnifiable matter shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amounts if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company.

(b) The right to indemnification and the advancement of expenses conferred in this Section 6.4 shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, agreement, by-law, vote of Managers or otherwise.

(c) The Company will maintain directors' and officers' liability insurance, at its expense, for the benefit of the Managers and officers of the Company and of any other Persons to whom the Board has delegated its authority pursuant to Section 5.7.

(d) Notwithstanding anything contained herein to the contrary (including in this Section 6.4), any indemnity by the Company relating to the matters covered in this Section 6.4 shall be provided out of and to the extent of Company assets only and no Member (unless such Member otherwise agrees in writing or is found in a final decision by a court of competent jurisdiction to have personal liability on account thereof) shall have personal liability on account thereof or shall be required to make additional capital contributions or otherwise provide funding to help satisfy such indemnity of the Company.

(e) If this Section 6.4 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Indemnified Person pursuant to this Section 6.4 to the fullest extent permitted by any applicable portion of this Section 6.4 that shall not have been invalidated and to the fullest extent permitted by applicable law.

6.5 **Members Right to Act.** For matters that require the approval of the Members (rather than the approval of the Board on behalf of the Members), the Members shall act through meetings and written consents as described in paragraphs (a) and (b) below:

(a) Except as otherwise expressly provided by this Agreement or as required by the New York Act, acts by the Members holding not less than 75% of the Units shall be the act of the Members. Any Member entitled to vote at a meeting of Members or to express consent or dissent to Company action in writing without a meeting may authorize another person or persons to act for it by proxy. A telegram, telex, cablegram or similar transmission by the Member, or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 6.5(a). No proxy shall be voted or acted upon after eleven months from the date thereof, unless the proxy provides for a longer period. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and that the proxy is coupled with an interest. Should a proxy designate two or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers

thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or, if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Company shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

(b) The actions by the Members permitted hereunder may be taken at a meeting called by the Board or by Members holding not less than 75% of the Units on at least twenty-four hours' prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Members entitled to vote or consent as to whom it was improperly held signs a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent at a meeting or by written consent (without a meeting, without notice and without a vote) so long as such consent is signed by the Members having not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

6.6 **Conflicts of Interest.**

(a) In recognition of the fact that the Company and its Subsidiaries, on the one hand, and the members of the Golden Gate Group, on the other hand, may currently engage in, and may in the future engage in, the same or similar activities or lines of business and have an interest in the same areas and types of corporate opportunities, and in recognition of the benefits to be derived by the Company and its Subsidiaries, through their continued contractual, corporate and business relations with the Golden Gate Group (including possible service of directors, officers and employees of the members of the Golden Gate Group as Managers, directors, officers and employees of the Company and its Subsidiaries), the provisions of this Section 6.6(a) are set forth to regulate and define the conduct of certain affairs of the Company and its Subsidiaries, as they may involve the members of the Golden Gate Group, and the powers, rights, duties and liabilities of the Company and its Subsidiaries, as well as its Managers, officers, employees and members in connection therewith. To the fullest extent permitted by law: (i) each member of the Golden Gate Group shall have the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly: (A) subject to the limitations contained in clause (y) of the last sentence of this Section 6.6(a), engage or otherwise participate in any manner whatsoever in the same, similar or competing business activities or lines of business as the Company or its Subsidiaries, (B) do business with any client or customer of the Company or its Subsidiaries, or (C) subject to the limitations contained in clause (y) of the last sentence of this Section 6.6(a), make investments in competing businesses of the Company or its Subsidiaries, and such acts shall not be deemed wrongful or improper; (ii) no member of the

Golden Gate Group shall be liable to the Company, for breach of any duty (contractual or otherwise), including without limitation fiduciary duties, by reason of any such activities or of such Person's participation therein (other than the duties of the Managers designated by the Golden Gate Majority Member to maintain as confidential or proprietary any information that is confidential or proprietary, respectively, to the Company or its Subsidiaries); and (iii) in the event any member of the Golden Gate Group acquires knowledge of a potential transaction or matter that may be a corporate opportunity for the Company or its Subsidiaries, on the one hand, and any member of the Golden Gate Group, on the other hand, or any other Person, no member of the Golden Gate Group shall have any duty (contractual or otherwise), including without limitation fiduciary duties, to communicate, present or offer such corporate opportunity to the Company or its Subsidiaries and shall not be liable to the Company or its Subsidiaries for breach of any duty (contractual or otherwise), including without limitation fiduciary duties, by reason of the fact that any member of the Golden Gate Group directly or indirectly pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present or communicate such opportunity to the Company or its Subsidiaries, even though such corporate opportunity may be of a character that, if presented to the Company or its Subsidiaries, could be taken by the Company or its Subsidiaries. The Company, on behalf of itself and each of its current or future Subsidiaries, hereby renounces any interest, right, or expectancy in any such opportunity not offered to it by the Golden Gate Group to the fullest extent permitted by law, and the Company, on behalf of itself and each of its current or future Subsidiaries, and each Member hereby waives any claim against each member of the Golden Gate Group or any Manager designated by the Golden Gate Majority Member or any of its direct or indirect beneficial owners based on the corporate opportunity doctrine, any alleged unfairness to the Company or such Member or otherwise that would require any member of the Golden Gate Group or any Manager designated by the Golden Gate Majority Member or any of its direct or indirect beneficial owners to offer any opportunity relating thereto to the Company or the Board. Notwithstanding the foregoing, (x) the Managers designated by the Golden Gate Majority Member shall have a duty to maintain as confidential or proprietary any information that is confidential or proprietary, respectively, to the Company or its Subsidiaries, (y) the Managers designated by the Golden Gate Majority Member shall not serve as a director, general partner, manager or the equivalent with any of the businesses competing with the Company set forth on Annex 1 attached hereto; and (z) nothing in this Section 6.6(a) shall exculpate any member of the Golden Gate Group from any willful misconduct, willful misuse of information that is proprietary to the Company or breach of its obligation to maintain as confidential or proprietary any information that is confidential or proprietary, respectively, to the Company or its Subsidiaries.

(b) Neither the alteration, amendment or repeal of Section 6.6(a) nor the adoption of any provision of this Agreement inconsistent with Section 6.6(a) shall eliminate or reduce the effect of Section 6.6(a) in respect of any matter occurring, or any cause of action, suit or claim that, but for Section 6.6(a), would accrue or arise, prior to such alteration, amendment, repeal or adoption.

(c) No provision of Section 6.6(a) shall limit or otherwise impair the duty of each Manager of the Company (including each Manager appointed by the Golden Gate Majority Member) to refrain from disclosing to any unauthorized third party or permitting the unauthorized use of any of the Company's confidential information (unless and to the extent any

such confidential information becomes generally known to and available for use by the public through no fault of the Manager in question).

ARTICLE VII

BOOKS, RECORDS, ACCOUNTING AND REPORTS

7.1 **Records and Accounting.** The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to Section 7.3 or pursuant to applicable laws. All matters concerning (i) the determination of the relative amount of allocations and distributions among the Members pursuant to Articles III and IV and (ii) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Board, whose determination shall be final and conclusive as to all of the Members absent manifest clerical error. Notwithstanding any provision to the contrary contained in this Agreement, the Members hereby agree that (i) the Company and each of its Designated Affiliates shall be audited on an annual basis and (ii) such annual audits shall be conducted by PriceWaterhouse Coopers LLP or another independent accounting firm reasonably satisfactory to the Golden Gate Majority Member.

7.2 **Fiscal Year.** The Fiscal Year of the Company shall be such annual accounting period as is established by the Board from time to time.

7.3 **Reports.** The Company shall use reasonable efforts to deliver or cause to be delivered, within 90 days after the end of each Taxable Year, to each Person who was a Member at any time during such Taxable Year all information from the Company necessary for the preparation of such Person's United States federal and state income tax returns.

7.4 **Transmission of Communications.** Each Person that owns or controls Units on behalf of, or for the benefit of, another Person or Persons shall be responsible for conveying any report, notice or other communication received from the Company to such other Person or Persons.

ARTICLE VIII

TAX MATTERS

8.1 **Preparation of Tax Returns.** The Company shall arrange for the preparation and timely filing of all tax returns required to be filed by the Company.

8.2 **Tax Elections.** The Taxable Year shall be the Fiscal Year set forth in Section 7.2, unless the Board shall determine otherwise in its sole discretion and in compliance with applicable laws. The Board shall, in its sole discretion, determine whether to make or revoke any available election pursuant to the Code. Each Member will upon request supply any information necessary to give proper effect to such election.

8.3 **Tax Controversies.** The Golden Gate Majority Member is hereby designated the Tax Matters Partner and 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 resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. The Tax Matters Partner shall keep the Board fully informed of the progress of any examinations, audits or other proceedings, it being agreed that no Member (other than the Golden Gate Majority Member, in its capacity as Tax Matters Partner) shall have any right to participate in any such examinations, audits or other proceedings. Notwithstanding the foregoing, the Tax Matters Partner shall not settle or otherwise compromise any issue in any such examination, audit or other proceeding without first obtaining approval of the Board.

ARTICLE IX

RESTRICTIONS ON TRANSFER OF UNITS; PREEMPTIVE RIGHTS

9.1 **Transfers of Units.**

(a) No Member (other than any member of the Golden Gate Group) may sell, transfer, assign, pledge, encumber or otherwise dispose of (whether directly or indirectly, whether with or without consideration and whether voluntarily or involuntarily or by operation of law) (a "Transfer") any interest (legal or beneficial) in any Units, except Transfers of Units pursuant to and in accordance with Sections 9.1(c).

(b) No Member may Transfer any interest (legal or beneficial) in any Units to any of the businesses competing with the Company set forth on Annex 1 attached hereto, provided that the restriction contained in this Section 9.1(b) shall not apply to any Transfer of Units by any Member pursuant to Section 12.7 or Section 12.8.

(c) The restrictions contained in Section 9.1(a) shall not apply to any Transfer of Units by any Member (i) to its Affiliates, (ii) pursuant to Section 12.7 or Section 12.8, (iii) to such Member's Family Group (or to the Family Group of such Member's Affiliates) either pursuant to the applicable laws of descent or distribution or by gift, or (iv) pursuant to Section 9.2(b); provided that the restrictions contained in this Agreement will continue to apply to the Units after any Transfer pursuant to clause (i), (iii), or (iv) above and that each of the conditions to the effectiveness of such Transfer set forth in this Agreement must be satisfied by the transferring Member and the transferee prior to the effectiveness of such Transfer. Prior to the Transfer of Units pursuant to clause (i) or (iii) of the first sentence of this Section 9.1(c), the transferor will deliver written notice to the Company, which notice will disclose in reasonable detail the identity of such transferee(s). Notwithstanding the foregoing, no party hereto shall avoid the provisions of this Agreement by making one or more Transfers of Units to one or more transferees permitted under clause (i) of the first sentence of this Section 9.1(c) and then disposing of all or any portion of such party's interest in such transferee.

(d) The rights and obligations of the Members set forth in this Section 9.1 shall continue until the first to occur of (i) the consummation of a Sale of the Company and (ii) the consummation of an IPO.

9.2 **Right of First Refusal; Participation Rights.**

(a) At least 30 days prior to any Transfer of any Units by any member of the Golden Gate Group (the "Transferring Member") for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8), the Transferring Member will deliver a written notice (the "Offer Notice") to the Company and the Other Members, specifying in reasonable detail the identity of the prospective transferee(s), if then known (the "Proposed Purchaser"), and the terms and conditions of the Transfer. The 30 day period commencing on delivery of the Offer Notice is referred to herein as the "Notice Period". The Offer Notice shall constitute a binding offer to sell the Units described in the Offer Notice to the Other Members on the terms and conditions described therein. Each Other Member may elect to purchase all (but not less than all) of such Other Member's Pro Rata Share (as defined below) of each class of Units specified in the Offer Notice at the price and on the terms specified therein by delivering written notice of such election to the Transferring Member as soon as practical but in any event within ten days after delivery of the Offer Notice. If any Other Members have elected to purchase Units from the Transferring Member, the purchase and sale of such Units shall be consummated as soon as practical, but in any event within 10 days after expiration of the Notice Period. To the extent that the Company and the Other Members have not elected to purchase all of the Units being offered, the Transferring Member may, within 90 days after the expiration of the Notice Period and subject to the provisions of Section 9.2(b) below, transfer such Units to one or more third parties at a price no less than the price per Unit specified in the Offer Notice and on other terms no more favorable to the transferees thereof than offered to the Other Members in the Offer Notice. Any Units not transferred within such 90-day period shall be reoffered to the Other Members under this Section 9.2(a) prior to any subsequent Transfer. Each Other Member's "Pro Rata Share" shall be based upon such Other Member's proportionate ownership of all Units outstanding other than the Units owned by the Transferring Member.

(b) At least 30 days prior to any Transfer of any Units by any member of the Golden Gate Group (the "Transferring Member") for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8), the Transferring Member will deliver a written notice (the "Sale Notice") to the Company and the Other Members specifying in reasonable detail the identity of the Proposed Purchaser and the terms and conditions of the Transfer (which Sale Notice may be the same notice and given at the same time as the Offer Notice under Section 9.2(a)). Notwithstanding the restrictions contained in Section 9.1(a), any or all of the Other Members may elect to participate in the Transfer contemplated by the Sale Notice by delivering written notice (a "Tag-Along Notice") to the Transferring Member within ten days after delivery of the Sale Notice. If no Tag-Along Notice is received by the Transferring Member within such ten-day period, none of the Other Members shall have the right to participate in the Transfer, and the Transferring Member shall have the right for a 90-day period to Transfer to the Proposed Purchaser up to the number of Units stated in the Sale Notice, at a price and on other on terms and conditions in the aggregate no more favorable to the Transferring Member than those stated in the Sale Notice. If any of the Other Members have validly elected to participate in such Transfer (such Other Members, "Participating Members"), the maximum number of Units that

each such Participating Member will be entitled to sell in such contemplated Transfer will be equal to the product of (i) the quotient determined by dividing the number of Units of the class of Units to be Transferred that are owned by such Participating Member by the aggregate number of Units of such class owned by the Transferring Member and all Participating Members in such sale and (ii) the number of Units of such class to be sold in the contemplated Transfer. In the event that the Transferring Member intends to Transfer more than one class or series of Units, the Participating Members shall be entitled to sell in the contemplated Transfer a pro rata portion of the Units of each such class (to the extent such Participating Members own any Units of such class of Units), which portion shall be determined in the manner set forth in the immediately preceding sentence.

> For example (by way of illustration only), if the Sale Notice contemplated a sale of 100 Units of a class by the Transferring Member, and if the Transferring Member at such time owns 30% of the Units of such class and if one Participating Member elects to participate and owns 20% of the Units of such class, the Transferring Member would be entitled to sell 60 Units (30% ÷ 50% x 100 Units) and the Participating Member would be entitled to sell 40 Units (20% ÷ 50% x 100 Units).

The Transferring Member will use commercially reasonable efforts to obtain the agreement of the Proposed Purchaser to the participation of the Participating Members in any contemplated Transfer, and the Transferring Member will not Transfer any of its Units to the Proposed Purchaser unless (i) simultaneously with such Transfer, the Proposed Purchaser purchases from the Participating Members the Units which such Participating Members are entitled and have elected to sell to such Proposed Purchaser(s) pursuant to this Section 9.2(b) or (ii) simultaneously with such Transfer, the Transferring Member purchases (on the same terms and conditions specified in this Section 9.2(b)) the number of Units from the Participating Members which the Participating Members would have been entitled, and have elected, to sell pursuant to this Section 9.2(b). The Transferring Member and the Participating Members will bear their pro-rata share (based upon the proceeds, before deduction for expenses, receivable by such Member in relation to the proceeds receivable by all such Members in such Transfer) of the out-of-pocket costs of any Transfer incurred by the Transferring Members pursuant to this Section 9.2(b) to the extent such costs are incurred for the benefit of all Members participating in the Transfer and are not otherwise paid by the Proposed Purchaser or a third party. Costs incurred by the Participating Members participating in the Transfer on their own behalf will not be considered costs of the Transfer hereunder.

(c) If any member of the Golden Gate Group desires to Transfer any Units for value (other than pursuant to an Exempt Transfer or pursuant to Section 12.7 or 12.8) and, following the consummation of any such Transfer, the members of the Golden Gate Group would no longer collectively own in the aggregate, directly or indirectly, at least 50 percent of the number of Units held by the members of the Golden Gate Group as of the date hereof (as adjusted for any Units splits or similar transactions), then such Transferring Member shall, prior to entering any negotiations or discussions with any third party with respect to such a Transfer, provide notice to the Company and the Other Members of such desire and shall negotiate exclusively and in good faith with the Other Members regarding the Transfer of such Units to the Other Members on terms and conditions reasonably acceptable to each of the Other Members and to such Transferring Member for a period of 60 days following the delivery of such notice.

If such Transferring Member and the Other Members cannot agree on the terms of such a Transfer of such Units during such 60 day period, such Transferring Member may enter into negotiations or discussions with any third party for the Transfer of such Units and, subject to the provisions of Sections 9.2(a) and 9.2(b), Transfer such Units to one or more third parties.

(d) The rights set forth in this Section 9.2 shall continue with respect to each Unit until the first to occur of (i) the consummation of an IPO or (ii) the consummation of a Sale of the Company.

9.3 **Restricted Units Legend**.

(a) The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. To the extent such Units are certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE OPERATING AGREEMENT OF THE ISSUER OF SUCH SECURITIES, AS SUCH AGREEMENT MAY BE AMENDED, MODIFIED OR RESTATED FROM TIME TO TIME, AND THE ISSUER RESERVES THE RIGHT TO REFUSE THE TRANSFER OF SUCH SECURITIES UNTIL SUCH TRANSFER RESTRICTIONS HAVE BEEN FULFILLED. A COPY OF SUCH OPERATING AGREEMENT SHALL BE FURNISHED BY THE ISSUER TO THE HOLDER HEREOF UPON WRITTEN REQUEST AND WITHOUT CHARGE."

(b) In connection with the Transfer of any Units, the transferring Member shall deliver written notice to the Company describing in reasonable detail the proposed Transfer, which shall, if so requested by the Company, be accompanied by (i) an opinion of counsel which (to the Company's reasonable satisfaction) is knowledgeable in securities law matters to the effect that such Transfer of Units may be effected without registration of such Units under the Securities Act or (ii) such other evidence reasonably satisfactory to the Company to the effect that such Transfer of Units may be effected without registration of such Units under the Securities Act. In addition, if the transferring Member delivers to the Company an opinion of such counsel that no subsequent Transfer of such Units shall require registration under the Securities Act, the Company shall promptly upon such contemplated Transfer deliver new certificates for such Units (if then certificated) which do not bear the Securities Act legend set forth in Section 9.3(a). If the Company is not required to deliver new certificates for such Units

not bearing such legend, the holder thereof shall not effect any Transfer of the same until the prospective transferee has confirmed to the Company in writing its agreement to be bound by the conditions contained in this Agreement.

(c) Upon the request of any Member, the Company will promptly supply to such Member or its prospective transferees all information regarding the Company required to be delivered in connection with a Transfer pursuant to Rule 144A of the Securities and Exchange Commission.

(d) If any Units become eligible for sale pursuant to Rule 144(k) of the Securities and Exchange Commission or no longer constitute "restricted securities" (as defined under Rule 144(a) of the Securities and Exchange Commission), the Company shall, upon the request of the holder of such Units, remove the Securities Act legend set forth in Section 9.3(a) above from the certificates (if any) for such securities.

(e) Each Member hereby agrees that, for so long as such Member holds at least one percent of the then outstanding Units (and provided that all other holders owning at least one percent of the outstanding Units and each director and executive officer of the Company also agree to a lock-up substantially similar to that set forth in this Section 9.3(e)), it will not, directly or indirectly, without the prior written consent of the Company and the managing underwriter(s), (i) during the period commencing on the date of the final prospectus relating to an IPO and ending on the date specified by the Company and the managing underwriter(s) (such period not to exceed 180 calendar days) and (ii) during the period commencing on the date of the final prospectus relating to any subsequent underwritten public offering by the Company of its capital stock to the public effected pursuant to an effective registration under the Securities Act (other than a registration on Form S-4 or Form S-8 or any successor forms) and ending on the date specified by the Company and managing underwriter(s) (such period not to exceed 90 calendar days): (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Units (whether such shares or any such securities are then owned by the Member or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Units, whether any such transaction described in clauses (i) or (ii) above is to be settled by delivery of Units, in cash or otherwise. The foregoing provisions of this Section 9.3(e) shall not apply to the sale of any Units to an underwriter pursuant to an underwriting agreement. Notwithstanding the foregoing, nothing in this Section 9.3(e) shall prevent a Member from making a transfer of any Units that were listed on a national stock exchange, actively traded over-the-counter or traded on the Nasdaq National Market at the time they were acquired by the Member or were acquired by such Member pursuant to Rule 144A of the Securities Act, including any shares acquired in the IPO.

9.4 **Counterparts; Joinder**. Prior to Transferring any Units (other than pursuant to Section 12.7 or Section 12.8) and as a condition precedent to the effectiveness of such Transfer, the transferring Member will cause the transferee of such Units to execute and deliver to the Company counterparts of this Agreement and any other agreements relating to such Units, or executed joinders to such agreements, in each case, in a form acceptable to the Company.

9.5 **Other Transfer Restrictions**. No Member may Transfer all or any portion of such Member's Units without the prior written consent of the Board if such Transfer would (a) cause the Company to have more than 100 partners within the meaning of Treasury Regulation Section 1.7704-1(h) or (b) cause the Company to have more than 100 beneficial owners of its securities for purposes of the Investment Company Act of 1940, as amended.

9.6 **Ineffective Transfer**. Any attempted Transfer of any Units in violation of any provision of this Agreement shall be void, and the Company will not record such attempted Transfer on its books or treat any Assignee of such Units as the owner of such Units for any purpose.

9.7 **Transferee's Rights and Obligations**.

(a) A Transfer of a Unit in a manner in accordance with this Agreement shall be effective as of the date that all of the conditions precedent to the effectiveness of such Transfer set forth in this Agreement shall have been satisfied by the transferring Member and the Assignee, as determined by the Board (the "Transfer Date"). The Assignee shall become a Substituted Member as of the Transfer Date. The Profits, Losses and other Company items shall be allocated between the transferring Member and the Substituted Member according to Code Section 706. Distributions made before the Transfer Date shall be paid to the transferring Member, and distributions made after such date shall be paid to the Substituted Member; provided, however, that any transferring Member and any Substituted Member may mutually agree as to which of them should receive payment of any distribution under Section 4.1.

(b) Unless and until a transfer of Units becomes effective and the Assignee becomes a Substituted Member hereunder, the Assignee shall not be entitled to any of the rights of a Member hereunder or under applicable law; provided that without relieving the transferring Member from any such limitations or obligations as more fully described in Section 9.8, such Assignee shall be bound by any limitations and obligations of a Member contained herein that a Member would be bound on account of such Units.

9.8 **Transferor's Rights and Obligations**. Any Member who shall Transfer any Units in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units and shall no longer have any rights or privileges, or, except as set forth in this Section 9.8, duties, liabilities or obligations, of a Member with respect to such Units on the Transfer Date (it being understood, however, that the applicable provisions of Sections 5.8 and 6.4 shall continue to inure to such Person's benefit after the Transfer Date), and until the Transfer Date, such transferring Member shall retain all of the duties, liabilities and obligations of a Member with respect to such Units. Nothing contained herein shall relieve any Member who Transfers any Units from any liability of such Member to the Company with respect to such Units that may exist on the Transfer Date or that is otherwise specified in the New York Act and incorporated into this Agreement or for any liability to the Company or any other Person for any materially false statement made by such Member (in its capacity as such) or for any present or future breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the other agreements with the Company.

9.9 **Indirect Transfers.**

(a) No Other Member shall Transfer any equity interest in such Member (whether such Transfer is effected directly or indirectly, through the issuance of additional equity interests of such Member or of any Owner of such Member, through the Transfer of equity interests of such Member or of any Owner of such Member, or otherwise) without the prior written consent of the Golden Gate Majority Member, which consent may be withheld in the sole discretion of the Golden Gate Majority Member. The restrictions contained in this Section 9.9(a) shall not apply to any Transfer of an equity interest in a Member by the holder of such equity interest (i) to an Affiliate of such holder or (ii) to such holder's Family Group (or to the Family Group of such Member's Affiliates) either pursuant to the applicable laws of descent or distribution or by gift; provided, that the restrictions contained in this Agreement will continue to apply to the equity interests of such Member after any such Transfer. In connection with the Transfer of equity interests permitted under this Section 9.9(a), the transferor will deliver a written notice to the Company and the Golden Gate Majority Member, which notice will disclose the basic details of such Transfer (including a description of the basis of the exemption on which the transferor is relying) and the identity of such transferee. Each Member shall be responsible for any breach of this Section 9.9 by its Owners, and the Company may treat any violation of this Section 9.9 as an impermissible transfer of Units by such Member.

(b) In furtherance of the restrictions set forth in Section 9.9(a), each of Faith Kates and Joel Wilkenfeld agrees that neither of them shall Transfer to any Person (directly or indirectly) any equity interests of any Member owned or controlled by them (including, without limitation, any equity interest in Wilcor or PHC) without the prior written consent of the Golden Gate Majority Member, which consent may be withheld in the sole discretion of the Golden Gate Majority Member. The restrictions contained in this Section 9.9(b) shall not apply to any Transfer of an equity interest in such Member by Faith Kates or Joel Wilkenfeld (i) to an Affiliate of such individual or (ii) to such individual's Family Group either pursuant to the applicable laws of descent or distribution or by gift; provided, that the restrictions contained in this Agreement will continue to apply to the equity interests after any such Transfer and prior, and as a condition, to such Transfer, the transferee of such equity interests shall agree in writing to be bound by the terms of this Agreement, including this Section 9.9.

(c) The rights and obligations set forth in this Section 9.9 shall continue until the first to occur of (i) the consummation of a Sale of the Company and (ii) the consummation of an IPO.

9.10 **Transfer of Equity Interests in Designated Affiliates.** The rights and obligations of the Members set forth in Sections 9.1, 9.2, 9.4 and 9.6 with respect to a Transfer of the Units held by any Member shall apply, *mutatis mutandis*, to any Transfer of any equity interests in the Designated Affiliates held by any Member.

9.11 **Preemptive Rights.**

(a) Except for the issuance or sale of Equity Securities (i) pursuant to an IPO, (ii) in connection with the conversion of any of the Company's outstanding Equity Securities into another class of Equity Securities on terms made available to all holders of the same class of

such outstanding Equity Securities, or (iii) as consideration deliverable in connection with an acquisition of another company or business (whether by merger, recapitalization, consolidation, reorganization, combination or otherwise) by the Company or any of its Subsidiaries, if the Company authorizes the issuance or sale of any Equity Securities (other than as a dividend on outstanding Equity Securities), the Company shall first offer to sell to each Unitholder (each, a "Preemptive Holder") a portion of such Equity Securities equal to the quotient determined by dividing (x) the number of Units then held by such Preemptive Holder by (y) the total number of Units then outstanding. Each such Preemptive Holder shall be entitled to purchase such Equity Securities at the same price and on the same terms as such Equity Securities are to be offered to each other purchaser of such Equity Securities. The purchase price for all Equity Securities offered to each such Preemptive Holder shall be payable in cash by wire transfer of immediately available funds.

(b) In connection with the issuance or sale of any Equity Securities to which the preemptive rights described in this Section 9.11 apply, the Company will deliver to each Preemptive Holder, as soon as reasonably practicable under the circumstances giving rise to the preemptive rights described in this Section 9.11, a written notice (the "Preemptive Rights Notice") describing (i) the Equity Securities being offered, (ii) the purchase price and the payment terms of the Equity Securities being offered (including the date the Company is requesting delivery of funds with respect thereto), and (iii) such Preemptive Holder's percentage allotment.

(c) In order to exercise its preemptive rights under this Section 9.11, each Preemptive Holder must deliver a written notice to the Company describing its election hereunder (which election may be with respect to all or any portion of the Equity Securities it has a right to purchase hereunder) no later than 20 days after receipt of the Preemptive Rights Notice (the "Election Period").

(d) During the 120 day period following the expiration of the Election Period, the Company shall be entitled to sell such Equity Securities which any Preemptive Holder has not elected to purchase prior to the expiration of the Election Period on terms and conditions (including price) no more favorable to the purchasers thereof than those offered to such Preemptive Holder. Any Equity Securities offered or sold by the Company to any Person after such 120 day period must be reoffered to each Preemptive Holder pursuant to the terms of this Section 9.11.

(e) The rights under this Section 9.11 will terminate upon the earlier to occur of (i) the consummation of an IPO and (ii) the consummation of a Sale of the Company.

ARTICLE X

ADDITIONAL MEMBERS

Subject to the provisions of Article IX hereof, a Person may be admitted to the Company as an Additional Member only upon furnishing to the Company (a) counterparts of this Agreement or an executed joinder to this Agreement in a form acceptable to the Company and (b) such other documents or instruments as may be necessary or appropriate to effect such

Person's admission as a Member (including entering into such documents as the Board may deem appropriate in its sole discretion). Such admission shall become effective on the date on which the Board determines in its sole discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Company.

ARTICLE XI

WITHDRAWAL AND RESIGNATION OF MEMBERS

No Member shall have the power or right to withdraw or otherwise resign as a Member from the Company prior to the dissolution and winding up of the Company pursuant to Article XII without the prior written consent of the Board, except as otherwise expressly permitted by this Agreement. Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Company without the prior written consent of the Board upon or following the dissolution and winding up of the Company pursuant to Article XII but prior to such Member receiving the full amount of distributions from the Company to which such Member is entitled pursuant to Article XII shall be liable to the Company for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member, and such Member shall be entitled to receive the Fair Market Value of such Member's equity interest in the Company as of the date of its resignation (or, if less, the amount that such Member would have received on account of such equity interest had such Member not resigned or otherwise withdrew from the Company), as conclusively determined by the Board, on the sixth month anniversary date (or such earlier date determined by the Board) following the completion of the distribution of Company assets as provided in Article XII to all other Members. Upon a Transfer of all of a Member's Units in a Transfer permitted by this Agreement, subject to the provisions of Section 9.8, such Member shall cease to be a Member.

ARTICLE XII

DISSOLUTION AND LIQUIDATION

12.1 **Dissolution.** The Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal or resignation of a Member. The Company shall dissolve, and its affairs shall be wound up, upon:

(a) the vote of the members of the Board holding at least a majority of the votes of all members of the Board; or

(b) the entry of a decree of judicial dissolution of the Company under Section 702 of the New York Act.

Except as otherwise set forth in this Article XII, the Company is intended to have perpetual existence. An Event of Withdrawal shall not cause a dissolution of the Company and the Company shall continue in existence subject to the terms and conditions of this Agreement.

12.2 **Liquidation and Termination.** On dissolution of the Company, the Board shall act as liquidator or may appoint one or more Persons as liquidator. The liquidators

shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the New York Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidators shall continue to operate the Company properties with all of the power and authority of the Board. The steps to be accomplished by the liquidators are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidators shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidators shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine); and

(c) all remaining assets of the Company shall be distributed to the Members in accordance with Section 4.1 by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, by 90 days after the date of the liquidation).

The distribution of cash and/or property to Members in accordance with the provisions of this Section 12.2 and Section 12.3 constitutes a complete return to the Members of their Capital Contributions and a complete distribution to the Members of their interest in the Company and all the Company's property. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

12.3 **Deferment; Distribution in Kind.** Notwithstanding the provisions of Section 12.2, but subject to the order of priorities set forth therein, if upon dissolution of the Company the liquidators determine that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss (or would otherwise not be beneficial) to the Members, the liquidators may, in their sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy Company liabilities (other than loans to the Company by Members) and reserves. Subject to the order of priorities set forth in Section 12.2, the liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (i) all or any portion of such remaining Company assets in-kind in accordance with the provisions of Section 12.2(c), (ii) as tenants in common and in accordance with the provisions of Section 12.2(c), undivided interests in all or any portion of such Company assets or (iii) a combination of the foregoing. Any such distributions in kind shall be subject to (x) such conditions relating to the disposition and management of such assets as the liquidators deem reasonable and equitable and (y) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any Company assets distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit or Loss (if any), which shall be allocated in accordance with Sections 4.2 and 4.3. The liquidators shall determine the Fair Market Value of any property distributed in accordance with the valuation procedures set forth in Article XIII.

12.4 **Cancellation of Articles.** On completion of the distribution of Company assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the liquidators shall file articles of dissolution with the Department of State of the state of New York, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 12.4.

12.5 **Reasonable Time for Winding Up.** A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Sections 12.2 and 12.3 in order to minimize any losses otherwise attendant upon such winding up.

12.6 **Return of Capital.** The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Company assets).

12.7 **Public Offering.**

(a) Subject to Section 5.2, if (i) the Board approves an initial public offering and sale of any of the Equity Securities of the Company pursuant to an effective registration statement under the Securities Act (an "IPO") and (ii) the IPO is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the Company's capital structure will adversely affect the marketability of the offering, each Member will consent to and vote for a recapitalization, reorganization and/or exchange of the existing Equity Securities of the Company into securities that the managing underwriters and the Board find acceptable and will take all necessary or desirable actions in connection with the consummation of the recapitalization, reorganization or exchange; provided that the resultant securities reflect and are consistent with the rights and preferences set forth in this Agreement as in effect immediately prior to such IPO. Without limiting the generality of the foregoing, each Member hereby waives any dissenters rights, appraisal rights or similar rights in connection with any such recapitalization, reorganization or exchange.

(b) The provisions of this Section 12.7 and all references to the defined term "IPO" in this Agreement will apply, *mutatis mutandis*, to (i) any initial public offering and sale of any common stock of any Subsidiary of the Company and the liquidation of the Company into any such Subsidiary in connection therewith, (ii) any Solvent Reorganization approved by the Board and (iii) any initial public offering and sale of any equity interests of any Designated Affiliate of the Company.

12.8 **Approved Sale.**

(a) If, on or after the fifth anniversary of the date hereof, the holders of at least a majority of the Golden Gate Units (the "Requisite Holders") approve a sale of all or substantially all of the Company's assets determined on a consolidated basis or a sale of a majority of the Company's outstanding Units, in either case, to any Independent Third Party or group of Independent Third Parties (whether by merger, recapitalization, consolidation, reorganization,

combination or otherwise) (collectively, an "Approved Sale"), the Board and each Member will vote for, consent to and raise no objections against such Approved Sale; it being agreed that the Golden Gate Majority Member will consult and discuss liquidity options and alternatives in good faith, to the extent it is reasonably practicable to do so, with the Other Members prior to exercising its rights set forth in this Section 12.8, which alternatives may include a purchase by the Other Members or their designees of the Golden Gate Units. If the Approved Sale is structured as (i) a merger or consolidation or asset sale or other transaction for which dissenter's, appraisal or similar rights are available under applicable law, each Member will waive any dissenter's rights, appraisal rights or similar rights in connection with such transaction or (ii) a sale of Equity Securities (including by recapitalization, consolidation, reorganization, combination or otherwise), each Member will agree to sell up to all of its Equity Securities on the terms and conditions approved by the Board and the Requisite Holders; it being agreed that each Member will sell a pro rata portion of each class of Units to be sold in the Approved Sale. Each Member will take all necessary or reasonably desirable actions in connection with the consummation of the Approved Sale as requested by the Requisite Holders and the Company, including without limitation voting such Member's Equity Securities that are voting securities and any other Equity Securities over which such Member has voting control in favor of such Approved Sale. In order to secure the performance by such Member of his, her or its obligations under this Section 12.8, such Member hereby appoints the Golden Gate Majority Member as his, her or its true and lawful proxy and attorney-in-fact, with full power of substitution, to vote all of his, her or its Equity Securities that are voting securities and any other Equity Securities over which such Member has voting control in favor of an Approved Sale and such other matters as provided for in this Section 12.8. The Golden Gate Majority Member may exercise the proxy granted to it hereunder at any time (and from time to time) if such Member fails to comply with its obligations under this Section 12.8. The proxies and powers granted by such Member pursuant to this Section 12.8 are coupled with an interest and are given to secure the performance obligations under this Section 12.8 and are irrevocable and shall survive the death, incompetency, disability, bankruptcy or dissolution of such Member and any subsequent holder of his, her or its Equity Securities. No Member shall grant any proxy or become party to any voting trust or other agreement (whether written or oral) that is inconsistent with, conflicts with or violates any provision of this Section 12.8.

(b) The obligations of each Member with respect to an Approved Sale are subject to the satisfaction of the following conditions: (i) upon the consummation of the Approved Sale and subject to the provisions of this Agreement, each Member shall receive the same portion of the aggregate consideration from such transaction that such Member would have received if such aggregate consideration had been distributed by the Company in a complete liquidation pursuant to the rights and preferences set forth in this Agreement as in effect immediately prior to such transaction, (ii) each holder of a class or series of Units shall receive the same form of consideration as other holders in such class or series, and, if any holder of a class or series of Units is given an option as to the form of consideration to be received, each holder of such class or series of Units will be given the same option, (iii) in no event shall a Member be liable, in connection with any indemnification obligations relating to an Approved Sale, for an amount in excess of the consideration received or receivable by such Member in connection with such Approved Sale, (iv) no Member shall be required to make any representations and warranties not made by all the other Members in connection with an Approved Sale (except as to such Member's title to its Equity Securities, its authority to enter into such Approved Sale and the

enforceability of its obligations thereunder), (v) each Member's obligation to indemnify the purchaser in any Approved Sale for any representations and warranties concerning the Company and its Subsidiaries shall be several (and not joint) obligations among the Members and shall either be pro-rated according to the total proceeds received by such Member in connection with the Approved Sale or provision will be made among the Members for such a pro rata sharing of indemnification obligations, and (vi) each Member's obligation to indemnify the purchaser in any Approved Sale shall be limited to the net (pre-tax) proceeds distributed to such Member in connection with such transaction.

(c) If the Company or the Members enter into any negotiation or transaction for which Rule 506 (or any similar rule then in effect) promulgated by the Securities and Exchange Commission may be available with respect to such negotiation or transaction (including a merger, consolidation or other reorganization), the Members that are not Accredited Investors (as such term is defined under Rule 501 promulgated by the Securities and Exchange Commission) will, at the request of the Company, appoint a purchaser representative (as such term is defined in Rule 501 promulgated by the Securities and Exchange Commission) reasonably acceptable to the Company. If any such Member appoints a purchaser representative designated by the Company, the Company will pay the fees of such purchaser representative, but if any such Member declines to appoint the purchaser representative designated by the Company, such Member will appoint another purchaser representative, and such Member will be responsible for the fees of the purchaser representative so appointed.

(d) The Company and each Member will work with the Golden Gate Majority Member to structure such Approved Sale to maximize the after-tax return to the Owners of the Members that are members of the Golden Gate Group in connection therewith, but only to the extent that such structure is not materially detrimental to the Company or any other Member or their after tax returns.

(e) In the event the Requisite Holders determine that the assets or equity interests of any of the Designated Affiliates shall be included in any Approved Sale, the provisions of this Section 12.8 shall apply shall apply, *mutatis mutandis*, to such Designated Affiliates and any of any equity interests in the Designated Affiliates held by each Member.

(f) The provisions of this Section 12.8 will terminate on the first to occur of (i) the consummation of an IPO and (ii) the consummation of a Sale of the Company (except as such provisions relate to any such Approved Sale).

ARTICLE XIII

VALUATION

"Fair Market Value" of any asset, property or equity interest means the amount which a seller of such asset, property or equity interest would receive in an all-cash sale of such asset, property or equity interest in an arms-length transaction with an unaffiliated third party consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), in each case, as such amount is determined by the

Board (or, if pursuant to Section 12.3, the liquidators) in its good faith judgment in such manner as its deems reasonable and using all factors, information and data deemed to be pertinent.

ARTICLE XIV

GENERAL PROVISIONS

14.1 Power of Attorney.

(a) Each Member hereby constitutes and appoints each member of the Board and the liquidators, with full power of substitution, as his, her or its true and lawful agent and attorney-in-fact, with full power and authority in his, her or its name, place and stead, to:

(i) execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (A) this Agreement, all certificates and other instruments and all amendments thereof which the Board (by approval of not less than three of the four Managers) deems appropriate or necessary to form, qualify, or continue the qualification of, the Company as a limited liability company in the State of New York and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments which the Board (by approval of not less than three of the four Managers) deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms, including the requirements of Section 14.2; (C) all conveyances and other instruments or documents which the Board (by approval of not less than three of the four Managers) deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including articles of dissolution; and (D) all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Article X or XI; and

(ii) sign, execute, swear to and acknowledge all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the reasonable judgment of the Board (by approval of not less than three of the four Managers), to evidence, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Members hereunder or is consistent with the terms of this Agreement and/or appropriate or necessary (and not inconsistent with the terms of this Agreement), in the reasonable judgment of the Board (by approval of not less than three of the four Managers), to effectuate the terms of this Agreement.

(b) The foregoing power of attorney is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member and the Transfer of all or any portion of his, her or its Units and shall extend to such holder's heirs, successors, assigns and personal representatives.

14.2 Amendments.

(a) The Board (pursuant to its power of attorney from the holders of Units as provided in Section 14.1), without the consent of any Member, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith, to reflect:

(i) a change in the name of the Company or the location of the principal place of business of the Company;

(ii) admission, substitution, removal or withdrawal of Members in accordance with this Agreement; and

(iii) a change that does not adversely affect any Member in any material respect in its capacity as an owner of Units and is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any United States federal or state agency or judicial authority or contained in any United States federal or state statute.

(b) In all other cases this Agreement may be amended or modified upon the consent of not less than three of the four Managers of the Board, the consent or approval of the holders of a not less than 75% of the Units then outstanding and the consent or approval of the holders of a majority of the Golden Gate Units then outstanding; provided that no such amendment or modification pursuant to this Section 14.2(b) that would materially and adversely affect holders of one class or series of Units in a manner different than holders of any other class or series of Units (other than amendments and modifications in connection with the actions of the Board permitted by Section 5.1) shall be effective against the holders of such class or series of Units without the prior written consent of holders of at least a majority of Units of such class or series materially and adversely affected thereby. Notwithstanding the foregoing, no amendment or modification to any of the terms and conditions of this Agreement which terms and conditions expressly require the approval or action of certain Persons (e.g., Faith Kates, Joel Wilkenfeld, the Board or the holders of Golden Gate Units) may be made without obtaining the consent of the requisite number or specified percentage of such Persons who are entitled to approve or take action on such matter.

14.3 **Title to Company Assets.** Company assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. Legal title to any or all Company assets may be held in the name of the Company, the Board or one or more nominees, as the Board may determine. The Board hereby declares and warrants that any Company assets for which legal title is held in its name or the name of any nominee shall be held in trust by the Board or such nominee for the use and benefit of the Company in accordance with the provisions of this Agreement. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets is held.

14.4 **Addresses and Notices.** Any notice provided for in this Agreement will be in writing and will be either personally delivered, or received by certified mail, return receipt requested, or sent by reputable overnight courier service (charges prepaid) to the Company at the address set forth below and to any other recipient and to any Member at such address as indicated by the Company's records, or at such address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Notices will be deemed to have been given hereunder when delivered personally or sent by telecopier (provided electronic confirmation of transmission is received), three days after deposit in the U.S. mail and one day after deposit with a reputable overnight courier service. The Company's address is:

To the Company:

Next Management, LLC
15 Watts Street, 6th Floor
New York, NY 10013
Attention: Co-Presidents
Telecopy: [redacted]

With a copy to:

Golden Gate Private Equity, Inc.
One Embarcadero Center, Suite 3900
San Francisco, CA 94111
Attention: Stefan Kaluzny
Telecopy: [redacted]

14.5 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

14.6 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company Profits, Losses, distributions, capital or property other than as a secured creditor.

14.7 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

14.8 **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

14.9 **Applicable Law; Waiver of Jury Trial.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. Any dispute relating hereto shall be heard in the state or federal courts located in the borough of Manhattan, New York, New York, and the parties agree to exclusive jurisdiction and venue therein and waive any objection based on venue or forum non conveniens with respect to any action instituted therein. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.10 **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

14.11 **Further Action.** The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

14.12 **Delivery by Facsimile.** This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation of a contract and each such party forever waives any such defense.

14.13 **Entire Agreement.** This Agreement, those documents expressly referred to herein and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

14.14 **Remedies.** Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and all of the rights which such Person has under any law. Any Person having any rights under any provision of this Agreement or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

14.15 **Descriptive Headings; Interpretation.** The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word "including" in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or

other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the words "or," "either" and "any" shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Wherever a conflict exists between this Agreement and any other agreement, this Agreement shall control but solely to the extent of such conflict.

* * * * *

IN WITNESS WHEREOF, the undersigned have executed this Operating Agreement as of the date first written above.

MEMBERS:

THE WILCOR GROUP, INC.

By: _____
Name: _____
Title: _____

PARTNERSHIP HOLDING CORP.

By: _____
Name: _____
Title: _____

CLAXON, INC.

By: _____
Name: _____
Title: _____

With respect to the obligations set forth in Section 9.9 and not as Members:

_____
JOEL WILKENFELD

_____
FAITH KATES

SCHEDULE A

Member	Company Interests	Number of Units
Claxon, Inc.	42%	42,000
The Wilcor Group, Inc.	27%	27,000
Partnership Holding Corp.	31%	31,000
Total	**100%**	**100,000**

ANNEX 1

Competing Businesses

IMG
Ford Models
Elite New York
Women Model Management
Supreme Management
DNA Models
Marilyn Model Management
Trump Management
1 Model Management
Major Model Management
New York Model Management
MC2 Model Management
Wilhelmina New York