UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO.: 2:09-CV-229-FTM-29SPC

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

FOUNDING PARTNERS CAPITAL MANAGEMENT,
and WILLIAM L. GUNLICKS,

Defendants,

FOUNDING PARTERS STABLE-VALUE FUND, LP,
FOUNDING PARTNERS STABLE-VALUE FUND II, LP,
FOUNDING PARTNERS GLOBAL FUND, LTD., and
FOUNDING PARTNERS HYBRID-VALUE FUND, LP,

Relief Defendants.

_______________________________________/

MOTION FOR APPROVAL TO EXECUTE AMENDMENT TO FP DESIGNEE LIMITED LIABILITY AGREEMENT

The Receiver Daniel S. Newman, not individually, but solely in his capacity as the Court-appointed receiver ("Receiver") for Founding Partners Capital Management Company ("FPCMC"); Founding Partners Stable-Value Fund, L.P. ("Stable Value"); Founding Partners Stable-Value Fund II, L.P. ("Stable Value II"); Founding Partners Global Fund, Ltd. ("Global Ltd.") and Founding Partners Hybrid-Value Fund, L.P. ("Hybrid Value") (Stable-Value, Stable Value II, Global Ltd., and Hybrid Value are collectively called the "Receivership Funds"), files this motion (the "Motion") for Court authorization for the Receiver to approve the Second Amended and Restated Limited Liability Company Agreement (the "Second Amended LLC Agreement") of Founding Partners Designee, LLC ("FP Designee" or the "Company").

I. INTRODUCTION

The Receiver files his Motion for approval of the Second Amended LLC Agreement to effectuate changes to the FP Designee Amended Limited Liability Company Agreement (the "Amended LLC Agreement").[1] The new proposed changes were recommended by the Board of Directors of FP Designee ("the Board"), in consultation with the Board's advisors. The Board and the Receiver believe the changes are warranted and in the best interests of FP Designee and its future members.[2]

When the Court approved the Settlement Agreement, it also approved the original LLC Agreement (the "LLC Agreement") of FP Designee and the establishment of an independent company to be governed by its Board in accordance with its governing documents and Delaware law. The Board believes, and the Receiver agrees, that the proposed amendments are appropriate because they will, among other things: (i) insure that all interest transfers are consistent with regulatory requirements; (ii) protect the continuity of the Board; (iii) protect minority interest holder rights by placing restrictions on business transactions between FP Designee and large interest holders of FP Designee, as well as transactions that might be inconsistent with the purpose of the establishment of FP Designee; and (iv) prohibit any member from acquiring, after the Court-approved distribution of interests, more than a specified percentage of membership

[1] As discussed below, on March 12, 2014, after consultation with counsel, the LLC Agreement was amended for the first time to provide Board members with certain indemnification rights and to address Board member standards of care as part of the pre-closing process.

[2] The Board is comprised of five individuals: The Receiver; Keith Kennedy; Ian Stokoe (Mr. Stokoe is also the Joint Official Liquidator appointed by the Cayman Islands Court); Edward Woodbury; and James Brown.

interest (absent Board approval) in order to maintain a balance of power among the interest holders and avoid any one interest holder having undue influence on the Board.[3]

The above provisions are reasonable and designed to protect the interest holders for whom the Settlement Transaction (as defined herein) and FP Designee were created. The Board, of which the Receiver is a member, believes that the approval of the proposed Second Amended LLC Agreement is warranted and in the best interests of the Company and the investors. As explained below, the Receiver must approve any such changes, and given the significance of the proposed changes, the Receiver believes that he must give the Court an opportunity to review the proposed changes, if the Court wishes to do so. As such, the Receiver respectfully requests the Court either: (1) enter an order authorizing the Receiver to approve the Second Amended LLC Agreement; or (2) enter an order declining involvement in this issue, in which case the Receiver, barring unforeseen circumstances, will approve the Second Amended LLC Agreement.

II. BACKGROUND

A. The Settlement Transaction and Creation of the Board

On December 9, 2011, the Parties filed their Joint Motion to Approve the Settlement Transaction (the "Joint Motion"). [D.E. 248, 248-3]. On August 28, 2012, the Court entered an order approving the settlement transaction (the "Settlement Transaction") in *Daniel S. Newman, as Receiver for Founding Partners Capital Management Company; et al v. Sun Capital, Inc., et al.*, U.S. District Court, Middle District of Florida – Fort Myers, Case No. 2:09-cv-445-FtM-29SPC (the "Sun Litigation") [D.E. 308] and the LLC Agreement [D.E. 248-3].

[3] As discussed herein, one of the proposed revisions to the Amended LLC Agreement would prohibit any interest holder from acquiring a greater than 10% interest absent Board approval. This new provision would apply only to the acquisition of interests after the Court-approved distribution.

On February 11, 2013, pursuant to the LLC Agreement,[4] the Receiver filed a Motion for Court Approval of the FP Designee Board Member Designations (the "Board Approval Motion") [Sun Litigation, D.E. 322]. Under the LLC Agreement, the Court had the authority to review or approve the Receiver's initial designations, with an option to decline involvement in the process. *See* LLC Agreement, Section 8.2(a)(ii) [D.E. 248-3 at 9]. Thus, the Receiver's Board Approval Motion asked the Court to either: (1) enter an order approving the designation of the proposed Board members as the initial four investor representative board members of the FP Designee, to serve until their successors are appointed in accordance with the provisions of the LLC Agreement, or until their earlier death, resignation, or removal;[5] or (2) enter an order declining to review or approve the Receiver's initial designations of FP Designee board members, in which case the designations would take effect in accordance with the provisions of the LLC Agreement. By Order dated August 23, 2013, the Court declined to exercise its option to approve the Board designations "absent any allegations or arguments that any of the Board Members nominated by the Receiver were unsuited for the position." [Sun Litigation, D.E. 339].

B. The FP Designee's Board Activity Since Designation

Upon designation and prior to closing the Settlement Transaction, the proposed Board met and subsequently retained the services of Kirkland & Ellis LLP to serve as its counsel and the investment banking firm of MTS Health Partners L.P., to advise it on business-related issues. The proposed Board met frequently after designation to discuss and provide input on FP Designee and subsidiary business issues.

---

4 As approved by the Court on August 28, 2012 in connection with the Motion to Approve the Settlement Agreement [Sun Litigation, D.E. 308]

5 In accordance with the LLC Agreement, no approval was required for the Receiver's appointment to the Board of FP Designee. [*See* LLC Agreement section 8.2(a)(ii), D.E. 248-3 at 9].

On March 12, 2014, the Board was formally constituted and subsequently approved the closing of the Settlement Transaction. Since the closing, the Board, in consultation with its advisors, has addressed a number of significant issues, including: (1) the exercise of an option to purchase a Missouri facility in which it was already operating; (2) the utilization of funds for construction of two facilities for which Promise had previously obtained certificates of need, which certificates were discussed in the settlement papers;[6] (3) the approval of agreements with key management; (4) the review of FP Designee and subsidiary governance structure and proposed changes to strengthen internal controls; (5) the evaluation of the potential acquisition of two facilities in Arizona; (6) the proposal and approval of the expenditure of funds to pay off existing receivables and address critical facility-related issues; (7) the approval of a loan transaction between City National Bank and FP Designee subsidiaries to fund construction and equipment for the LTAC facilities in development;[7] (8) the proposal of amendments to the LLC Agreement;[8] and (9) the consideration of other amendments to the FP Designee's governing documents. Each of these actions was undertaken only after consideration by the Board, after substantial review of materials prepared by the FP Designee or its advisors, and after Board discussions with management and advisors.[9]

C. The LLC Agreement Requires Receiver Approval of Certain Actions and Transactions

So long as Founding Partners continues to own at least a ten percent (10%) interest in FP Designee, the LLC Agreement requires the Receiver to approve certain major FP Designee

---

[6] One LTAC facility under construction is located in Fort Myers, Florida right off I-75. The other LTAC facility under construction is located in Miami Lakes, Florida. Both facilities are expected to be completed by September 2014, and to begin receiving patients for a demonstration period shortly thereafter.

[7] This transaction closed on July 7, 2014.

[9] On May 6 and 7, 2014, the Board met for two days in person in California to discuss business operations, finances, governance, and other issues. The Board also toured three facilities located in Southern California and met staff at those facilities.

decisions. This provision was placed in the LLC Agreement to ensure protection of investors who will be the interest holders in FP Designee, and provides:

> **8.5 Major Decisions.** After the date hereof and for so long as Founding Partners continues to own a Membership Interest representing at least ten percent (10%) of the Ownership Percentages, neither the Company nor any Subsidiary shall take any of the following actions without the prior affirmative vote of the FP Manager with respect to such action; provided, however, that in the event that a majority of the other Board members oppose the vote of the FP Manager as to any such major decision, they shall be permitted to petition the Court to potentially overrule the vote of the FP Manager on such major decision:
>
> (i) declare or pay any dividends or pay any other distribution; *amend this Agreement, the Bylaws or the Company's Certificate of Formation.*

See LLC Agreement at Section 8.5(i) (emphasis added).

D. The Proposed Amendments to the LLC Agreement

Like the original LLC Agreement, Section 13.5 of the Amended LLC Agreement provides for operation of FP Designee under the authority of its Board and grants the Board the power to amend it upon the Board's written consent and a "Majority Vote" of "Members."[10] Further, the Amended LLC Agreement provides that without the written consent of all Members, no amendment shall amend Section 13.5.

As noted, on March 12, 2014, as part of the pre-closing process, the LLC Agreement was amended for the first time (the "Amended LLC Agreement") solely to provide those individuals whom had agreed to serve on the Board with certain indemnification rights. Specifically, the

---

[10] The LLC Agreement provides that: *"Majority Vote"* shall mean the affirmative vote or written consent of Members then owning of record Membership Interests, in the aggregate, representing a majority of the Ownership Percentages owned by all Members. *"Manager"* means any Person that is a member of the Board. It also provides that: *"Member"* shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and any other Person that hereafter acquires a Membership Interest in compliance with the terms of this Agreement.

Manager Indemnification Agreement, attached as Exhibit "A" to the LLC Agreement,[11] was amended to provide indemnification to any Board member that was threatened or made a party to any action principally by reason of being a member of the Steering Committee.[12] Further, Section 9.5 was added to Amended LLC Agreement to provide certain additional protections to members agreeing to serve on the Board, *i.e.* managers. Specifically, Section 9.5 of the Amended LLC Agreement provides that, to the extent permitted by law, managers do not owe fiduciary duties, and provides a waiver of claims related to breaches of fiduciary duties. These amendments were made after discussions with the Board, prior to the closing of the Settlement Transaction, in consultation with the Board's counsel and advisors.

Thereafter, during a May 2014 Board meeting, the Board considered, among other things, additional amendments to the Amended LLC Agreement regarding the protection of minority interest holders, which is the subject of this Motion. The Board held many subsequent meetings to discuss the proposed amendments, as well as voting procedures, the nominating process, corporate stability, and conformation of membership interest transfer policies to state and federal healthcare regulatory requirements.

The Board, of which the Receiver is a member, determined that it is in the best interests of FP Designee to amend the Amended LLC Agreement and adopt the changes reflected in the Second Amended LLC Agreement to, among other things: (i) ensure future transfers of membership interests comply with regulatory requirements; (ii) protect the rights of minority interest holders; and (iii) provide stability to FP Designee and further the purpose for which the

---

[11] *See* Amended LLC Agreement at Article 8, Section 8.2(i). A copy of the Amended LLC Agreement, compared to the LLC Agreement, is attached hereto as **Exhibit A**.

[12] The Bylaws were also amended to address the indemnification protections contained in the Amended LLC Agreement.

Settlement Transaction was conceived and FP Designee established, *i.e.* to provide defrauded investors in the Receivership Funds the opportunity to recoup losses through the maximization of value of membership interests in FP Designee.[13] The changes recommended by the Board, including the Receiver, are contained in the Second Amended LLC Agreement of FP Designee.[14]

The Court held a hearing on June 10, 2014, on the Receiver's proposed claims distribution and the fairness of the issuance of membership interests in the FP Designee under the securities laws. [D.E. 395]. At that hearing, counsel for the Receiver indicated that the Receiver would be filing a motion for authorization to amend the LLC Agreement to address minority interest holder protections. Thereafter, on July 3, 2014, the Court entered its Order approving the Receiver's proposed claims distribution, directing FP Designee to record in its books and records the membership interests to be distributed, and "to bestow such rights upon such members in accordance with Delaware law and [FP Designee] governing documents, as amended and as may be further amended." [D.E. 430 at 32].

In accordance with that Order, management at FP Designee and its subsidiaries have started the process of preparing to recognize the membership interests on its books and records. Because FP Designee is a holding company for subsidiaries that own and/or operate certain healthcare facilities, management has reported that healthcare regulators will require approval of those investors who are set to become owners pursuant to the distribution process.[15] Thus, in connection with the process of reflecting the distribution in its books and records, management

---

13 The Board members, with the exception of the Receiver, have all executed written consents authorizing the adoption of the Second Amended LLC Agreement and Second Amended and Restated Bylaws, along with all proposed amendments.

14 A copy of the proposed Second Amended LLC Agreement showing proposed revisions to the Amended LLC Agreement is attached hereto as **Exhibit B**.

15 As discussed *infra* at pp. 15-16 in connection with the proposed amendment to Article 11, Section 11.1.

for the FP Designee and its subsidiaries are also obtaining information from investors, to be submitted to the appropriate regulatory authorities for approval. For these reasons, it is anticipated that the Receivership will have at least a 10% interest in the FP Designee, and concomitantly the Receiver will remain on the Board, for a period of time in excess of 30 days after the July 3 Order, while regulatory approval for the ownership transfers are obtained. During this time, as noted, major changes such as changes in the LLC Agreement require the Receiver's approval under the governing documents. The Receiver therefore makes this request to enable FP Designee to make these amendments.

E. The Proposed Amendments to the Amended LLC Agreement

There are five primary amendments to the governance provisions of the proposed Second Amended LLC Agreement:

> 1. Article 8, Section 8.2(a) splits the Board into three classes, establishes a three-year term for Board members, and staggers the election of each class across three years;
>
> 2. Article 8, Section 8.6 imposes a supermajority voting requirement to approve business combinations—such as a sale or merger—with interested members;
>
> 3. Article 11, Section 11.1 requires transferees to provide certain ownership information which is mandated by healthcare regulatory authorities;
>
> 4. Article 11, Section 11.2 restricts members from owning or acquiring more than 10% of the ownership interests after the effective date—with a "grandfather" exception for those members who already exceed that limitation as of the effective date—unless the Board provides an exemption; and
>
> 5. Article 13, Section 13.5 requires a supermajority vote by the Board and the members to approve any amendment to the members' rights provisions, including the provisions above.

See Ex. B at Articles 8, 11, and 13.

The well-developed body of Delaware law governing business associations supports each of these proposed amendments to the Amended LLC Agreement. Each of the proposed amendments is contemplated by the Delaware Limited Liability Act, and each is permitted even in the more heavily regulated context of Delaware corporations. Furthermore, each proposed amendment reflects practices that are common and well-accepted in the closely-scrutinized context of U.S. public companies.

F. The Proposed Amendment to the Bylaws

The Second Amended LLC Agreement also incorporates Amended and Restated By-Laws.[16] The Board, in consultation with counsel and its advisors, also recommends amendments to the Bylaws, which would be effectuated by adoption of the Second Amended LLC Agreement. The primary amendments to the Bylaws are:

> 1. Article 1, Section 3 proscribes the period for notice to members of meetings, as well as, the ownership status for members placing items on the agenda for meetings and the notice that must be provided for such items.
>
> 2. Article 1, Section 8 addresses actions that may be taken by written consent of the members;
>
> 3. Article 1, Section 12 provide for the ability of members to nominate individuals for election as managers, which ability currently lies only with a nominating committee;
>
> 4. Article 4, Section 4 provides that the Company will use reasonable efforts to make available both quarterly reports and year-end reports available to members and provides the timing and circumstances as to how such information will be made available; and
>
> 5. Article 6, Section 1 addresses the requirements for amending the Bylaws and the financial disclosure described in Article 4, Section 4.

---

[16] Redlined versions of the Bylaws are included in Exhibits A and B.

As with the amendments contained in the Second Amended LLC Agreement, the Receiver respectfully believes the amendments to the Bylaws are consistent with the original intent of the Settlement Transaction and the purposes for which FP Designee was created. Further, each proposed amendment reflects practices that are common and well-accepted in the closely-scrutinized context of U.S. public companies.

III. ARGUMENT

A. Members Have Broad Discretion To Craft LLC Agreements Under Delaware Law

Members of a limited liability company have broad discretion to craft controlling agreements. Unlike corporations, which must take specific forms and which are subject to specific rules under Delaware corporate law, limited liability companies ("LLCs") are fundamentally creatures of contract law. As such, LLCs are given wide latitude under Delaware law to draft an LLC agreement that meets their specific needs.

The Delaware Limited Liability Act provides: "It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements." Del. Code, tit. 6, § 18-1101(b). Thus, "[t]he LLC Act provides contracting parties with flexibility to craft an agreement that is tailored to their needs." *Zimmerman v. Crothall*, 62 A. 3d 676, 691 (Del. Ch. 2013); *see also Huatco v. Satellite Healthcare & Satellite Dialysis of Tracy, LLC*, 2013 WL 6460898, at *6 (Del. Ch. Dec. 9, 2013), *aff'd*, 2014 WL 2566155 (Del. June 5, 2014). Such flexibility is provided by affording members "broad discretion" in drafting their LLC agreement and by "furnish[ing] default provisions when the members' agreement is silent." *Elf Atochem N. Am., Inc. v. Jaffari & Malek LLC*, 727 A. 2d 286, 291 (Del. 1999). Indeed, it "is now a mundane notion … that under the Act, the parties to an LLC agreement have substantial authority to shape their own affairs and that in general, any

conflict between the provisions of the Act and an LLC agreement will be resolved in favor of the LLC agreement." *Achaian, Inc. v. Leemon Family LLC*, 25 A. 3d 800, 802-03 (Del. Ch. 2011). Delaware courts will invalidate the provisions of an LLC agreement "only where the agreement is inconsistent with mandatory statutory provisions [which] are likely to be those intended to protect third parties, not necessarily the contracting members." *Elf Atochem*, 727 A. 2d at 292.

B. The Proposed Amendments to the LLC Agreement And Bylaws Are Appropriate and Supported Under the Law

1. *The Staggered Board*

The proposed revision to Article 8.2(a) creates a staggered Board. The purpose of a staggered Board is to prevent wholesale changes in the Board and provide stability to the company – here, FP Designee. The Board believes this provision is necessary to mitigate the risk of wholesale Board changes derailing the implementation of FP Designee's long-term plans.

If this proposed amendment were approved, Board members would be grouped into three separate classes, would be elected on a staggered basis over three successive years, and would serve three-year terms thereafter. Staggered boards are a long-recognized feature of Delaware corporate law. Delaware's law on corporations permits them. *See* Del. Code tit. 8, § 141(d) ("The directors of any corporation organized under this chapter may … be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter ….”). Delaware's law on corporations similarly permits board members to first be appointed to particular classes and to serve less than a full term, before then being elected on a staggered basis — as this amendment provides. *See id.* ("The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board already in office to such classes at the time such classification becomes

effective."). Delaware courts have repeatedly approved the use of staggered boards for corporations, which "Delaware law has permitted since 1899," and acknowledged that such a board "enhances the bargaining power of a target's board and makes it more difficult for an acquirer ... to gain control of its target without the consent of the board." *Airgas, Inc. v. Air Prods. & Chems., Inc.*, 8 A. 3d 1182, 1184 (Del. 2010); *see also Yucaipa Am. Alliance Fund II, L.P. v. Riggio*, 1 A. 3d 310, 323 (Del. Ch. 2010), *aff'd*, 15 A.3d 218 (Del. 2011). Thus, staggered boards are not only permitted by Delaware law on corporations, they are commonplace amongst public companies. According to a compendium of data on such public companies, more than 40% have staggered boards. *See* Takeover Defense Report from SharkRepellent.net.[17]

In light of the extensive authority and precedent for the use of staggered boards in the context of corporations, it is unsurprising that Delaware's Limited Liability Act also expressly authorizes the creation of staggered or classed boards. *See* Del. Code tit. 6, § 18-404(a). The Act provides: "A limited liability company agreement may provide for *classes* or groups of managers [*i.e.*, board members] having such relative rights and duties as the limited liability company agreement may provide ...." *Id.* (emphasis added). Article 8.2 of the Second Amended LLC Agreement is thus not only permissible under Delaware law on business associations, but is warranted under the facts of this case.

2. The *Voting Requirements to Approve Business Combinations with Interested Members*

The proposed revision to Article 8, Section 8.6, imposes a supermajority voting requirement to approve business combinations — for example, sales or mergers — with "interested members." *See* Article 8.6. "Interested members" are defined as those members who hold, or have in the past three-year period held, more than 15% of the ownership interests or

[17] The Takeover Defense Report is attached as **Exhibit C**.

voting rights of the company, or such members' transferees. *See* Article 1. Pursuant to the proposed amendment, business combinations with such members require the consent of members owning two-thirds of the remaining ownership interests. *See* Article 8.6. Thus, the purpose of this proposed amendment, among other things, is to place restraints on transactions when significant FP Designee interest holders are transacting business with FP Designee.

This voting requirement is well grounded in Delaware law. The Limited Liability Act permits LLCs to merge with other entities, to prescribe the rules for such mergers, and to prohibit mergers altogether. Del. Code tit. 6, §§ 18-209(b), (h). Delaware case law confirms that LLCs can "impose additional requirements for a merger," including a supermajority voting requirement to approve certain mergers. *See Kelly v. Blum*, 2010 WL 629850, at *3, 7 (Del. Ch. 2010) (acknowledging and enforcing LLC agreement's express requirement that certain mergers be approved by two classes of managers, collectively holding 75% of ownership interests); *see also Milford Power Co. v. PDC Milford Power, LLC*, 866 A. 2d 738, 740 (Del. Ch. 2004) (certain mergers required "[u]nanimous consent of the members").

Delaware corporate law also authorizes the same voting requirement for business combinations with an interested stockholder — which is defined similarly to interested member in the amended LLC agreement — as is proposed in Article 8.6 here. *See* Del. Code, tit. 8, § 203(a)(3) ("[A] corporation shall not engage in any business combination with any interested stockholder for a period of 3 years following the time that such stockholder became an interested stockholder, unless ... the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder"); *compare id.* § 203(c)(5) (defining "interested stockholder") *with*

Amended LLC Agreement Art. 1 (defining "interested member"). Delaware corporate law permits corporations to opt out of § 203; however, over 60% of public companies (of nearly 4,000 public companies tracked in the report) have chosen not to opt out of such protection (or the equivalent protection under comparable state statutes of non-Delaware jurisdictions). *See* Ex. C. Thus, Article 8.6 of the Amended LLC Agreement is permitted under Delaware law.

Based on the reasons for the formation of FP Designee and good corporate governance, placing the proposed restraints on business combinations with interested equity holders makes sense and is in the best interests of all members of FP Designee.

3. *The Provisions Requiring Transferees To Provide Information Required By the Company and Healthcare Regulators*

The requirements set forth in Article 11, Section 11.1, concerning the process for transferring membership interests, is necessary to comply with regulatory requirements. The subsidiaries of FP Designee operate in the highly-regulated area of healthcare and are subject to state and federal regulation. Based on the corporate structure of FP Designee, whose subsidiaries own and manage hospitals, LTAC's, and skilled nursing facilities, healthcare regulators require that FP Designee provide specified information concerning its members in connection with the operation of its subsidiaries.[18] Absent the regulators' approval of the proposed change in ownership that the transfer process involves, the subsidiaries could be sanctioned and/or required

[18] Health care regulators have the duty and authority to vet direct and indirect owners of health care providers such as hospitals. Further, some regulators must approve changes in the majority of the ownership or control of a health care provider, whether direct or indirect. This approval process often requires the disclosure of a significant amount of information about prospective, new indirect owners. In addition, there are some individuals and entities that are precluded from having an ownership interest in health care providers that participate in federal health care programs like the Medicare and Medicaid program (*i.e.*, excluded individuals). *See generally* 42 C.F.R. 420.204 and 420.206 (requiring disclosure of persons with ownership or control interest and principals convicted of crimes (Medicare)); 42 C.F.R. 424.35 (allowing for revocation of a provider's Medicare number where the provider or a provider's owner/manager has been subject to an adverse action (Medicare)); 42 C.F.R. 455.104 (requiring disclosure of ownership or control and establishing consequences for failure to disclose (Medicaid)); and 42 C.F.R. 455.106 (requiring disclosure of persons convicted of crimes and establishing consequences for failure to disclose (Medicaid)).

to cease operations in their jurisdictions. Accordingly, FP Designee and its Board have amended Article 11, Section 11.1 to provide in part:

> Subject to Section 11.2, any Member may Transfer all or any part of its Membership Interest so long as prior to such Transfer (a) such Transfer is approved by all necessary regulatory authorities of competent jurisdiction (as determined by the Board) and transferor and transferee shall provide to the Board all information necessary or advisable to apply for, obtain and maintain such approvals (such obligation shall be continuing for transferee following any such Transfer for so long as such transferee is a Member), including a completed and executed questionnaire in form and substance as the Board may from time to time prescribe (and as may be amended by the Board from time to time); provided, however, that the costs and expenses of obtaining such approvals shall be borne by the transferor and not by the Company; (b) the transferor shall provide the Board with a completed transfer request, executed by both transferor and transferee, in form and substance as the Board may from time to time prescribe (and as may be amended by the Board from time to time), setting forth, among other things, sufficient details regarding such Transfer so that the Company can record such Transfer on its books and records and including the transferee's written agreement to be bound by the terms and conditions of this Operating Agreement, including the continuing obligation set forth in Section 11.1(a); and . . . Any certificate representing Membership Interests may bear one or more legends to the effect that such Membership Interests are subject to the transfer restrictions set forth in this Agreement and applicable law.

The proposed amendment approved by the Board is critical to the stability of FP Designee's subsidiaries' operations and is in the best interests of the investors/ultimate members for whom the FP Designee was established.

4. *The Limitation on Exceeding a Particular Ownership Percentage and the Accompanying Reporting Requirement*

The proposed amendment to Article 11, Section 11.2 would impose a limit on the ownership interests of each member unless the Board provides an exemption. This limitation would restrict a member from acquiring or beneficially owning more than 10% of the membership interests after the "Effective Date", with a "grandfather" exception for those

members who already exceed that limitation as of the "Effective Date", *i.e.*, as a result of the Court's Order dated July 3, 2014. Such a limitation is common in Delaware. The purpose of this provision is to prevent one or several interest holders from obtaining such a significant position that they could influence the Board to the detriment of the remainder of the interest holders.

Delaware's Limited Liability Act makes clear that an LLC agreement may restrict the right of owners of LLCs to transfer their ownership interests: "A limited liability company interest is assignable in whole or in part *except as provided in a limited liability company agreement*." Del. Code, tit. 6, § 18-702(a) (emphasis added). Delaware case law affirms the validity of such restrictions in LLCs. See *Achaian*, 25 A. 3d at 805; *In re Buonamici*, 2008 WL 3522429, at *7 (Del. Ch. Aug. 11, 2008); *Minnesota Invco of RSA No. 7, Inc. v. Midwest Wireless Holdings LLC*, 903 A. 2d 786, 789 (Del. Ch. 2006). Delaware's law on corporations similarly permits such ownership limitations. *See* Del. Code, tit. 8, § 202; *see also Third Point LLC v. Ruprecht*, 2014 WL 1922029 (Del. Ch. May 2, 2014) (upholding board's adoption of a shareholder rights plan, limiting passive ownership to 20% and active ownership to 10%).

The proposed reporting requirement in Article 11, Section 11.3, which requires notifying the FP Designee if a member exceeds the restrictions set forth in Article 11.2, is a necessary corollary to an LLC's ability to restrict transfers of interests. If an LLC can impose limits on transferring interests — which it can under Delaware law — it must be able to impose a reporting requirement to ensure compliance with the limiting provision. In the context of corporations, federal law provides a similar notice requirement, mandating that "[e]very person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered ..." to report to the SEC when they become such a beneficial owner. *See* 15 U.S.C. § 78p(a)(1).

BROAD and CASSEL
One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

An analogous limitation in the public-company context is the existence of a "poison pill." A "poison pill" does not prohibit ownership above a certain threshold, but imposes significant dilution to any person who attempts to exceed the threshold without approval by the board of directors. Approximately 9% of the companies listed on the Russell 3000 index have adopted a poison pill which is currently in effect, with nearly 22% of those having a threshold of 10% or less, and less than 22% of those have a threshold above 15%. *See* Ex. C. Delaware courts routinely uphold the adoption of poison pill and similar shareholder rights plans. *See, e.g.*, *Yucaipa Am. Alliance Fund II, L.P.*, 1 A. 3d 310, *aff'd*, 15 A. 3d 218 (Del. 2011); *Versata Enterprises, Inc. v. Selectica, Inc.*, 5 A. 3d 586 (Del. 2010); *Moran v. Household Intern., Inc.*, 500 A. 2d 1346 (Del. 1985); *Unocal Corp. v. Mesa Petroleum Co.*, 493 A. 2d 946 (Del. 1985).

5. *The Supermajority Voting Requirements*

Finally, the proposed revisions to Article 13, Section, 13.5, which require a supermajority vote by FP Designee's members to amend the members' rights provisions, including Articles 8.2(a), 8.6, 11.2 and 11.3, comport with Delaware law and indeed are commonplace. The purpose of this proposed amendment is to ensure that if any interest holder or potential combination of interest holders sought to strip FP Designee of protections afforded by its governing documents, such change would require approval. Again, these changes make sense and are appropriate to insure the protection of investors for whom FP Designee was created.

Delaware's Limited Liability Act expressly contemplates supermajority votes to amend provisions specified in an LLC agreement: "Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement." Del. Code, tit. 6, § 18-302(e). In the corporate context, Delaware courts have

similarly upheld shareholder rights provisions that employ a supermajority amendment provision. *See, e.g.*, *In re Gaylord Container Corp. Shareholders Litig*, 753 A. 2d 462, 483 (Del. Ch. 2000) (upholding a plan requiring 66 2/3% approval to amend shareholder-rights provisions). More than 50% of public companies require supermajority votes to amend their charters (or certain provisions thereof). *See* Ex. C.

6. *The Changes to the Bylaws*

Each of the changes to the Bylaws is designed to encourage disclosure and foster communication and participation by the members, furthering the same goals as the amendments to the Amended LLC Agreement. Proposed new Article 1, Section 3 prescribes the period for notice to members of meetings, as well as the ownership status for members placing items on the agenda for meetings, and the notice that must be provided for such items. One purpose of this provision is to ensure that only members that are entitled to vote can raise business at the meeting. The provision also requires notice to FP Designee of issues that are proposed to be placed on the agenda so FP Designee has sufficient time to address such issues and other members have the appropriate time to consider such issues before a meeting. The notification also requires full disclosure of the proposing member's interest in the agenda item for consideration by the voting members.

The change to Article 1, Section 8 addresses actions that may be taken by written consent of the members. The amendment requires any action to be taken without a meeting by unanimous consent to discourage such actions, and thus afford every member the right to fully hear any issue and raise any objection at a meeting. Members of FP Designee should be encouraged to address important issues at meetings of the members so that the members can hear

other views in reaching their own decisions on how to vote. The underlying principle is that of transparency, requiring all actions by members to be taken when all members may participate.

The change to Article 1, Section 12 allows members to nominate individuals for election as managers, which ability previously rested only with a Board nominating committee. This amendment grants members the right to nominate directors and sets forth a procedure to do so.

The revisions to Article 4, Section 4 provide that the FP Designee will use reasonable efforts to make available both quarterly reports and year-end reports available to members and provides the timing and circumstances as to how such information will be made available. The Board believes it is important for members to have access to periodic reliable financial information concerning the FP Designee's performance. This provision was added to the Bylaws to provide that type of disclosure to members and specifies that such information will be available to members on the FP Designee's website.

Finally, Article 6, Section 1 addresses the requirements for amending the Bylaws. The only significant change to this section is the requirement that any change to alter the financial disclosures described in Article 4, Section 4 would require the vote of all managers. This provision was amended to ensure that financial disclosure cannot be altered simply by the vote of a majority of managers but would require the vote of all manages.

IV. CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the Court either: (1) enter an order authorizing the Receiver to approve the Second Amended and restated Limited Liability Agreement of Founding Partners Designee; or (2) enter an order declining involvement in this issue, in which case the Receiver, barring unforeseen circumstances, will be authorized to approve the Second Amended Limited Liability Company Agreement.

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel who are not authorized to receive electronically Notices of Electronic Filing.

Dated: July 28, 2014.

Respectfully submitted,

By: /s/ Jonathan Etra

Jonathan Etra
jetra@broadandcassel.com
Florida Bar No. 0686905
BROAD AND CASSEL
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131
Tel.: 305.373.9447
Fax: 305.995.6403
Attorneys for Receiver

SERVICE LIST

Robert K. Levenson, Esq. Miami Regional Trial Counsel Securities and Exchange Commission 801 Brickell Avenue, Suite 1800 Miami, FL 33131 305-982-6341 (direct dial) 305-536-4154 (facsimile) levensonr@sec.gov *Counsel for U.S. Securities and Exchange Commission* Service via CM/ECF	**Gabrielle D'Alemberte, Esq.** The D'Alemberte Trial Firm, P.A. 1749 N.E. Miami Ct. Suite 301 Miami, FL 33132 gabrielle@dalemberte.com *Counsel for William & Pamela Gunlicks* Service via CM/ECF
Jonathan Galler, Esq. Proskauer Rose LLP 2255 Glades Rd Suite 421 Atrium Boca Raton, FL 33431 **Tel: 561.995.4733** **Fax: 561.241.7145** jgaller@proskauer.com *Counsel for Sun Defendants* ***Service via CM/ECF***	Sarah S. Gold, Esq. Karen E. Clarke, Esq. Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299 **Tel: 212.969.3000** **Fax: 212.969.2900** sgold@proskauer.com kclarke@proskauer.com *Counsel for Sun Defendants* ***Service via CM/ECF***

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

FOUNDING PARTNERS DESIGNEE, LLC

This Amended and Restated Limited Liability Company Agreement of FOUNDING PARTNERS DESIGNEE, LLC (the "Company"), a Delaware limited liability company, is made and entered into as of ~~May 24, 2012~~March _____, 2014, by and between the Company and FOUNDING PARTNERS STABLE-VALUE FUND, L.P., a Delaware limited partnership ("Founding Partners"), and such other Persons as may be admitted from time to time as Members of the Company in accordance with the terms of this Agreement and the Act (as hereinafter defined).

The parties hereto desire to amend and restate the existing Limited Liability Company Agreement of the Company dated May 24, 2012 (the "Original Agreement"), in order to make certain changes to any such Original Agreement as hereinafter provided.

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

WITNESSETH:

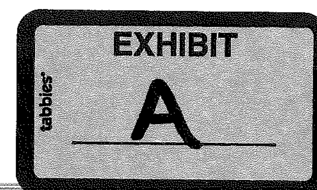
WHEREAS, the Certificate of Formation of the Company has ~~or will be~~previously been filed with the Secretary of State of Delaware ~~on or about the date hereof,~~ in accordance with the provisions of the Act; and

WHEREAS, Founding Partners desires to set forth herein the manner in which such limited liability company shall be governed and operated.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, Founding Partners and any other Persons who subsequently acquire a Membership Interest, intending to be legally bound hereby, agree as follows.

ARTICLE 1
DEFINITIONS

The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters.



"*Act*" shall mean the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, Section 18--101 et seq., as same may be amended from time to time.

"*Affiliate*" shall mean any other Person directly or indirectly owning a majority interest in such Person and controlling -such Person or owning a minority interest in such Person and controlling -such Pperson by virtue of contractual provisions, or a Person who is majority owned by such Person and controlled by such Person or who is minority owned by such Person and controlled by such Person by virtue of contractual provisions; provided, however, that no party to this Agreement shall be considered an affiliate of any other party solely by reason of its investment in the Company.

"*Agreement*" shall mean this Amended and Restated Limited Liability Company Agreement as originally executed and as amended from time to time.

"*Board*" means the Board of Managers of the Company.

"*Capital Account*" shall mean a financial account to be established and maintained by the Company for each Member as computed from time to time in accordance with the capital account maintenance rules set forth in Regulations Section 1.704--1(b)(2), as such Regulations may be amended from time to time.

"*Capital Contribution*" shall mean the total amount of money or the net fair market value of property (as determined in good faith by the Board) contributed by each Member to the Company pursuant to the terms of this Agreement.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"*Company*" shall mean Founding Partners Designee, LLC, a Delaware limited liability company.

"*Company Minimum Gain*" shall mean the amount determined in accordance with Regulations Section 1.704--2(d) by (i) computing with respect to each Nonrecourse Liability of the Company the amount of income or gain, if any, that would be realized by the Company if it disposed of the property securing such Nonrecourse Liability in full satisfaction thereof, and (ii) aggregating all separate amounts so computed.

"*Court*" shall mean the United States District Court, Middle District of Florida – Fort Myers Division, which appointed the Receiver of Founding Partners and certain of its Affiliates.

"*Entity*" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"*Equity Securities*" means all Membership Interests of the Company, all securities convertible or exchangeable for Membership Interests of the Company, and all options, warrants,

and other rights to purchase or otherwise acquire Membership Interests from the Company, including any unit appreciation or similar rights, contractual or otherwise.

"Fiscal Year" shall mean the annual accounting period specified in Section 10.1 hereof.

"Founding Partners" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and the initial Member of the Company.

"*Majority Vote*"_ shall mean the affirmative vote or written consent of Members then owning of record Membership Interests, in the aggregate, representing a majority of the Ownership Percentages owned by all Members.

"*Manager*" means any Person that is a member of the Board.

"Member" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and any other Person that hereafter acquires a Membership Interest in compliance with the terms of this Agreement.

"Member Nonrecourse Debt" shall have the meaning ascribed to the term "partner ~~non-recourse~~nonrecourse debt" in Regulations Section 1.704--2(b)(4).

"Member Nonrecourse Deductions" shall mean any and all items of loss, deduction or expenditure (described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Regulations Section 1.704--2(i)(2), are attributable to Member Nonrecourse Debt.

"Membership Interest" shall mean a Member's entire interest in the Company, including such Member's share of the Profits, Losses and distributions of the Company, and the Member's right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement or the Act.

"Minimum Gain Attributable to Member Nonrecourse Debt" shall have the meaning ascribed to the term "partner nonrecourse debt minimum gain" in Regulations Section 1.704--2(i)(2).

"Nonrecourse Deductions" shall mean that amount determined in accordance with Regulations Section 1.704--2(b)(1).

"Nonrecourse Liability" shall mean any liability of the Company treated as a nonrecourse liability under Regulations Section 1.704--2(b)(3).

"Ownership Percentage" shall mean a Member's percentage interest in the Profits, Losses and distributions of the Company as adjusted under this Agreement. –The initial Ownership Percentages are as follows:

Founding Partners:—_100%

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of any such Person where the context so permits.

"Profit or Loss" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; and (b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss, shall be subtracted from such taxable income or loss. Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 7.2 hereof shall not be taken into account in computing Profit or Loss.

"Receiver" shall mean Daniel S. Newman, solely in his capacity as the Court appointed receiver of Founding Partners and certain of its Affiliates.

"Regulations" shall mean the Federal Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Settlement Agreement" shall mean that certain Settlement Agreement to be entered into, subject to Court approval, by and among Sun Capital Healthcare, Inc., a Florida corporation; Sun Capital, Inc., a Florida corporation; Success Healthcare, LLC, a California limited liability company; Promise Healthcare, Inc., a Florida corporation; Peter R. Baronoff, an individual; Howard B. Koslow, an individual; Lawrence Leder, an individual; Malinda Baronoff, an individual; Jane Koslow, an individual; Carole Leder, an individual; Mark Dawson, an individual; the subsidiaries and affiliates of SCHI, SCI, Success and Promise identified on Annex I attached thereto; Founding Partners; Founding Partners Global Fund, Ltd., a corporation organized under the laws of the Cayman Islands; Founding Partners Stable-Value Fund II, L.P., a Delaware limited partnership; Founding Partners Hybrid-Value Fund, L.P., a Delaware limited partnership; and Receiver.

"*Subsidiary*" means, with respect to any Person, any Entity that is owned or controlled, directly or indirectly, by (i) such Person, (ii) such person and one or more Subsidiaries of such Person, or (iii) one or more subsidiaries of such Person. For purposes of this definition, the term "controlled" means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Transfer*" shall mean a sale, assignment, transfer or other disposition (voluntarily or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, a Membership Interest.

ARTICLE 2
ORGANIZATIONAL MATTERS

1.1——Name-. The name of the Company is Founding Partners Designee, LLC.

1.2——Principal Place of Business-. The principal place of business of the Company is 999-Yamato Road, 3rd Floor, Boca Raton, Florida 33431. The Company may locate its places of business and registered office at any other place or places as the Board may from time to time deem advisable.

1.3——Registered Office and Registered Agent. The Company's initial registered agent within the State of Delaware is Capitol Services, Inc.- and the registered office of the Company with the State of Delaware is 615 South Dupont Highway, Dover, Delaware 19901,. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of Delaware pursuant to the Act and the applicable rules promulgated thereunder.

1.4——Term. The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of Delaware and shall continue in perpetuity thereafter until dissolved in accordance with the provisions of this Agreement or the Act.

1.5——Tax Status. The undersigned intends for the Company to be treated as a partnership for federal income tax purposes if the Company has two or more Members, and otherwise as an entity that is disregarded as an entity separate from its owner for federal income tax purposes pursuant to Regulations Section 301.7701-3.

1.6——Bylaws. The bylaws of the Company attached hereto as Annex A (as amended, restated, supplemented or otherwise modified from time to time, the "Bylaws") are hereby adopted and approved by the Members. This Agreement and the Bylaws are intended to serve as a "limited liability company agreement," as such term is defined in Section 18-101(7) of the Act.

ARTICLE 3
BUSINESS OF COMPANY

1.7——Purposes. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities is necessary or incidental to the foregoing. The Company shall have all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

1.8——Use of Subsidiaries. It is contemplated that the Company will own one or more Subsidiaries. The Board may form and/or acquire such Subsidiaries from time to time. It is the intention of the Members that the use of Subsidiaries not alter their rights herein and references in this Agreement to the Company shall include any Company Subsidiaries where appropriate to accomplish that intent.

ARTICLE 4
SCHEDULE OF MEMBERS

______The name and business, mailing or residence address of each of the Members of the Company are set forth on Schedule I hereto. The Board shall amend Schedule I from time to time to accurately reflect the names and business, mailing or residence addresses of each of the Members and each of the Persons who shall become Members after the date hereof.

ARTICLE 5
CONTRIBUTIONS TO THE COMPANY

1.9—Members' Capital Contributions.-. Simultaneously with the execution of this Agreement, the initial Member shall make the following Capital Contribution in cash to the Company:

Member	Capital Contribution
Founding Partners	$100

Member	Capital Contribution
Founding Partners	$100

1.10—Reimbursement of Expenses. The Company shall reimburse the initial Member for all direct out-of-pocket costs incurred in connection with the formation of the Company.

1.11—Third-Party Loans.-. In the event that the Board shall determine, at any time and from time to time, that the Company requires additional funds, the Board shall have the right to cause the Company to borrow additional funds from a third-party lender upon such terms and conditions as the Board deem reasonable and appropriate under the circumstances.

1.12—Member Loans. In the event the Company is unable to obtain any third-party loans upon terms acceptable to the Board or the Board determines that the Company requires funds in addition to any amounts borrowed under Section 5.3 above, then the Members may make loans to the Company in such amounts and upon such terms and conditions authorized by the Board. -Any loan made by a Member shall not be treated as a Capital Contribution for any purpose under this Agreement, nor shall any such loan entitle a Member to any increase in his or her share of the Profits, Losses or distributions of the Company. -Any loan from a Member shall be repayable on the terms and conditions and shall bear interest at the rate agreed to by the lending Member and the Board, if applicable.

1.13—Additional Capital Contributions. The Members shall have the right to make additional Capital Contributions to the Company from time to time, but no Member shall be obligated to make any additional Capital Contributions to the Company.

1.14—Withdrawal or Reduction of Members' Contributions to Capital. A Member shall not receive out of the Company's property any part of such Member's Capital Contribution until all liabilities of the Company have been paid or there remains property of the Company sufficient to pay them. A Member, irrespective of the nature of such Member's Capital Contribution, has only the right to demand and receive cash in return for such Capital

Contribution. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein. –The Capital Contribution of a Member shall not be considered as a liability of the Company.

ARTICLE 6
DISTRIBUTIONS

1.15—Distributions. The Company shall make distributions at such times and in such amounts as the Board shall determine to the Members in accordance with their Ownership Percentages.

1.16—Dissolution.—. Notwithstanding Section 6.1 hereof, upon dissolution of the Company provided in Section 12.3 hereof, all distributions occurring thereafter shall be made in accordance with Section 12.5.

6.3 Limitation Upon Distributions. No distributions shall be made to the Members if prohibited by the Act.

~~. No distributions shall be made to the Members if prohibited by the Act.~~

1.17—Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state, local or other tax law with respect to any payment or distribution to the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes under this Agreement.

ARTICLE 7
ALLOCATIONS

1.18—Profits and Losses.—. Subject to Section 2.5, any Profit or Loss realized by the Company for any Fiscal Year or other period shall be allocated among the Members in accordance with their respective Ownership Percentages. –Notwithstanding the foregoing, no Loss shall be allocated to a Member to the extent it would cause or increase a deficit balance in such Member's Capital Account. -In such case, the Loss shall be allocated to the Members with positive balances in their Capital Accounts in proportion to such balances, and appropriate adjustments shall be made to the allocation of subsequent Profit in order to offset the allocation of such Loss.

1.19—Regulatory Allocations. Notwithstanding Section 7.1 above but subject to Section 2.5, the following special allocations shall be made for each Fiscal Year in the following order of descending priority:

(a) Company Minimum Gain. Except as otherwise provided in Regulations Section 1.704--2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704--2(g).- This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704--2(f) and shall be interpreted consistently therewith.

(b) Minimum Gain Attributable to Member Nonrecourse Debt. –Except as otherwise provided in Regulations Section 1.704-–2(i), if there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year, each Member with a share of Minimum Gain Attributable to Member Nonrecourse Debt shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-–2(i)(4).- This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-–2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-–1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted capital account deficit (as such term is used in Regulations Section 1.704-–1 (b)(2)(ii)(d)) of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.2(c) shall be made only after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.2(c) were not in this Agreement. -This Section 7.2(c) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-–1(b)(2)(ii)(d)(3) of the Treasury Regulations and is to be interpreted to the extent possible to comply with the requirements of such Regulation as it may be amended or supplemented from time to time.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated to the Members in the same ratios that Profit is allocated for the Fiscal Year in accordance with Regulations Section 1.704-–2(b)(1).- If the Board determines in good faith that the Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, then the Board shall revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(e) Member Nonrecourse Deductions. -Member Nonrecourse Deductions for any Fiscal Year shall be allocated one hundred percent (100%) to the Member that bears the economic risk of loss (as defined in Regulations Section 1.704-–2(b)) with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-–2(i).- If more than one Member bears the economic risk of loss with respect to a Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such economic risk of loss.

1.20—Curative Allocations-. The allocations set forth in Section 7.2 (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-–1 (b) and 1.704-–2(b).- Notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to

each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

1.21—Code Section 704(c).). In accordance with Code Section 704(c) and the Regulations thereunder and Regulations Section 1.704-1(b)(4)(i), income, gain, loss and deduction (as computed for federal income tax purposes) with respect to any property contributed to the capital of the Company or otherwise revalued on the books of the Company shall, solely for federal income tax purposes, be allocated among the Members to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value as determined at the time of the contribution or revaluation. -Any elections or other decisions relating to such tax allocations shall be made by the Board.

1.22—Code Section 754 Election. To the extent and at the times provided by law, the Company may, by vote of the Board, elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

ARTICLE 8
MANAGEMENT

1.23—Management of the Company. Subject to the delegation of rights and powers provided for herein and the Bylaws, the Board shall have the sole right to manage the business and affairs of the Company and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company.

8.2 Board Representation.

(a) The Company and the Members shall take such actions as may be required to ensure that (x) the number of Managers constituting the Board shall consist of five individuals, and (y) the presence of a majority of the total number of Managers then in office (and for so long as Founding Partners owns at least a ten (10%) Ownership Percentage, including the Manager nominated under Section 8.2(a)(i) hereof), is required to constitute a quorum of the Board.

(i) Founding Partners shall be entitled (A) to designate one individual to the Board (the "FP Manager") until its successor is elected and qualified, (B) to designate a-successor to the FP Manager and (C) to direct the removal from the Board of the FP Manager designated under the foregoing clauses (A) or (B); provided, however, that upon the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company, then the Board shall promptly thereafter nominate individuals to serve as Board Members in accordance with the Bylaws and thereafter hold an election to elect five Managers to fill the Board (the "Elected Managers") and to replace all of the then incumbent Board members (except to the extent that any of such incumbents are elected in such election) in accordance with the provisions of Section 8.2(a)(iii). The FP Manager initially appointed to the Board in accordance with this Section 8.2(a)(i) shall be Daniel S. Newman.

(ii) Four individuals that are affiliated with various investors in Founding Partners and/or its Affiliates shall be designated by Founding Partners to serve as members of the Board, subject to their approval by the Court, if the Court agrees to review those designations, until their successors are elected and qualified or their earlier removal by the Court, to the extent that the Court agrees to assume that power.

(iii) Promptly after the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company and annually thereafter, the Members other than Founding Partners by Majority Vote (but excluding Founding Partners from such vote) shall be entitled (A) to elect five individuals to serve as Elected Managers until, in each case, their respective successors are elected and qualified, (B) to elect successors to the Elected Managers and (C) to direct the removal from the Board of any Elected Managers.

(iv) Each Board designation or any proposal to remove from the Board any Manager shall be made by delivering to the Company a notice signed by the party or parties entitled to such Board designation or proposal. As promptly as practicable, but in any event within ten (10) days, after delivery of such notice, the Company shall take or cause to be taken such actions as may be reasonably required to cause the appointment or removal proposed in such notice. Such actions may include calling a meeting or soliciting a written consent of the Board, or calling a meeting or soliciting a written consent of the Members (excluding Founding Partners).

(b) Subject to the foregoing, in the event a vacancy is created on the Board by reason of the death, disability, resignation or termination of any Manager, each of the Members hereby agrees that such vacancy shall be filled in accordance with the applicable procedures set forth in this Section 8.2; provided, that if the provisions of Sections 8.2(a)(i) or (ii) are not then applicable, then such vacancy shall be filled by way of a vote of the remaining members of the Board.

(c) Upon execution of this Agreement, the Managers designated in Section 8.2(a) will be elected and will serve until their successors are duly elected and qualified pursuant to the terms of this Agreement and the Bylaws or until their earlier death, disability, resignation, termination (with cause or without cause) or other removal.

(d) No Member, by reason of such Member's status as such, shall have any authority to act for or bind the Company but shall have only the right to vote on or approve the actions to be voted on or approved by such Member as specified in this Agreement or the Bylaws or as required under the Act.

(e) The officers of the Company shall be, and shall be elected, removed and perform such functions, as are provided in the Bylaws,; provided, however, that the Company shall not, and shall not permit any Subsidiary to, hire any senior executive officer without the prior approval of the Board, except for Peter R. Baronoff's employment agreement that has already been approved along with the Settlement Agreement. Subject to the terms of this Agreement, the Board may appoint, employ or otherwise contract with such other Persons for the transaction of the business of the Company or the performance of services for or on behalf of the Company as they shall determine in their sole discretion. The Board may delegate to any officer

of the Company or to any such other Person such authority to act on behalf of the Company as the Board may from time to time deem appropriate in their sole discretion.

(f) Except as otherwise determined by the Board, when the taking of any action has been authorized by the Board, any officer of the Company or any other Person specifically authorized by the Board or the Bylaws may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the Secretary of State of the State of Delaware any certificates of amendment to the Company's Certificate, one or more restated Certificates and certificates of merger or consolidation and, upon the dissolution and completion of winding up of the Company, or as otherwise provided in the Act, a certificate of cancellation canceling the Company's Certificate.

(g) In addition to all other rights and powers provided by this Agreement, the Bylaws and the Act, the Board shall have the power to set the annual fiscal budget for the Company and to approve or disapprove the annual fiscal budget presented by any of its Subsidiaries from time to time.

(h) The Board shall have the right to establish any committees of the Board deemed appropriate by the Board from time to time. Subject to this Agreement, the Bylaws and the Act, each committee of the Board shall have the rights, powers and privileges granted to such committee by the Board from time to time.

(i) The Company shall execute and deliver a Manager Indemnification Agreement, substantially in the form of Exhibit A attached hereto, in favor of each Manager. The Company may obtain Managers' and Officers' insurance at the discretion of the Board.

1.24—Meetings; Expenses; Compensation. The Company shall reimburse each Manager who is not an employee of the Company for his or her reasonable out-of-pocket expenses (including travel, lodging and meal expenses) incurred in connection with the attendance of meetings of the Board or any committee thereof or the performance of his or her duties.

8.4 Member Voting Rights.

(a) The Members shall not have any voting rights, except (i) as required by the Act or other applicable law or (ii) as otherwise expressly required by this Agreement and the Bylaws. Except for cumulative voting in the election of Managers provided for in the Bylaws, with respect to any matter as to which a vote of the Members is required, such matter shall require the affirmative vote or written consent of the Members whose Membership Interests represent a majority of the then outstanding aggregate Ownership Percentages, unless a higher or lower percentage is otherwise required.

(b) Except as otherwise required by the Act or other applicable law, this Agreement or the Bylaws, each Member shall be entitled to vote on all matters to be voted on by the Members. Each Member may elect to vote none or a portion of his, her or its Membership Interest following the delivery of a written notice to the Board setting forth such election.

1.25—Major Decisions. After the date hereof and for so long as Founding Partners continues to own a Membership Interest representing at least ten percent (10%) of the Ownership Percentages, neither the Company nor any Subsidiary shall take any of the following actions without the prior affirmative vote of the FP Manager with respect to such action; provided, however, that in the event that a majority of the other Board members oppose the vote of the FP Manager as to any such major decision, they shall be permitted to petition the Court to potentially overrule the vote of the FP Manager on such major decision;:

(a) (1) issue or authorize any Equity Securities, (2) issue any unit, stock or equity appreciation or similar rights, (3) establish or materially modify any compensation plans of the Company, (4) create a bonus plan or program or issue any bonuses or agree to issue bonuses, the payment of which is contingent upon the occurrence of a Liquidity Event, change of control or similar event, or (5) redeem, repurchase or acquire any Equity Securities, in any such case, other than pursuant to this Agreement;

(b) issue or guarantee any debt for borrowed money or grant a security interest, lien or other encumbrance on any property in connection with any debt for borrowed money;

(c) take any action that is reasonably expected to result in a Liquidity Event;

(d) effect any acquisition by the Company of any business;

(e) effect any sales or other dispositions of assets outside of the ordinary course of business;

(f) commence or terminate the employment of the chief executive officer, chief financial officer or chief operating officer of the Company, or amend or revise the terms of any employment agreement with any such officer;

(g) alter the size of the Board;

(h) enter into, amend, terminate, enforce or grant any waivers under any contract or agreement with any officer, director, stockholder, Affiliate or employee (each a "Related Person") of the Company or any subsidiary, or with any Affiliate of a Related Person, including, without limitation, for the sale or repurchase of any of the Company's Equity Securities (other than any contract or agreement entered into with such Related Person on terms not less favorable to the Company or Subsidiary, as the case may be, than would be obtained in a transaction with a Person which is not a Related Person, as determined by a mutually agreed upon third party). Notwithstanding the foregoing, such prior approval shall not be required with respect to any contract, agreement, action or transaction explicitly permitted by, required under, or contemplated by, the Settlement Agreement;

(i) declare or pay any dividends or pay any other distribution;

(j) amend this Agreement, the Bylaws or the Company's Certificate of Formation;

(k) amend, terminate or otherwise exercise or waive any rights on behalf of the Company arising under, the Settlement Agreement, in each case, at any time prior to the closing of the transactions contemplated thereby; or

(l) agree to take any of the foregoing actions.

At any applicable time that the Company has any Subsidiary, it shall not permit such Subsidiary to take any of the foregoing actions (with all references to the Company deemed to be references to such Subsidiary) without the prior affirmative vote of the FP Manager with respect to such action.

ARTICLE 9
RIGHTS AND OBLIGATIONS OF MEMBERS

1.26—Limitation on Liability. Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law.

1.27—No Liability for Company Obligations. No Member will have any personal liability for any debts or losses of the Company beyond such Member's Capital Contribution, except as provided by law, relating to liability for wrongful distributions.

1.28—Priority and Return of Capital. Except as may be expressly provided herein, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or distributions. -This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

1.29—Acknowledgement. Each Member acknowledges and agrees that except as required under the Act or applicable federal law and state securities laws, or as expressly provided in this Agreement or any other agreement between the Company and a Member, the Company will have no duty or obligation to disclose to any Member, and no Member will have any right to be advised of, any information regarding the Company or any Subsidiary. Notwithstanding anything in this Agreement, each Member acknowledges and agrees that it is expected that certain of the other Members and their respective Affiliates will on and after the date hereof, make investments in (by way of capital contributions, loans or otherwise), Persons engaged in businesses that directly or indirectly compete with business of the Company and its Subsidiaries as conducted from time to time. Each Member further acknowledges and agrees that any such investment activity shall not in any way constitute a breach of any term of this Agreement and shall not give rise to any claim, action, right to sue or other remedy against any such Member or their respective Affiliates on behalf of any Member, the Company, any Subsidiary of the Company or any of their respective Affiliates, whether under contract or applicable law.

9.5 Standard of Care; Fiduciary Duties. To the fullest extent permitted by law, no Member (or any of its Affiliates or any of their respective officers, directors, employees, agents, members, associates or other representatives) and no Manager shall as a result of this Agreement or such status owe any fiduciary duty to the Company, any Affiliate of the Company, any other Member or any Affiliate of such other Member. No Member shall as a result of this Agreement or such status have any claim against any other Member (or any of such other Member's Affiliates or any of their respective officers, directors, employees, agents, members, associates or

other representatives) or any Manager based upon or arising from a claimed breach of a fiduciary duty, duty of care, duty of loyalty, corporate opportunity doctrine, conflict of interest or any similar basis, and each Member hereby waives any such claim on behalf of itself, its Affiliates and their respective successors and assigns.

ARTICLE 10
ACCOUNTING AND TAX MATTERS

1.30—Accounting Period.—. The Company's annual accounting period shall be the calendar year.

1.31—Accountants.—. The Company's accountants shall be such accounting firm that is chosen from time to time by the Board.

1.32—Records, Audits and Reports. At the expense of the Company, the Company shall maintain records and accounts of all operations and expenditures of the Company. -In addition, the Company shall keep the following records at the principal place of business of the Company:

(a) A current list of the full name and last known address of each Member;

(b) Copies of records to enable a Member to determine the relative voting rights, if any;

(c) A copy of the Certificate of Formation of the Company and all amendments thereto;

(d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(e) Copy of this Agreement, together with any amendments thereto; and

(f) Copies of any financial statements of the Company for the three most recent years.

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

1.34—Tax Matters Partner.—. The "tax matters partner" of the Company for all purposes under the Code shall be Founding Partners until such time as it no longer owns at least ten percent of the Ownership Percentages in the Company. Thereafter, the "tax matters partner" shall be such other Member as may be appointed as such by the Board from time to time.

ARTICLE 11
TRANSFERS OF MEMBERSHIP INTERESTS

1.35—Member's or Assignee's Right to Transfer. Any Member may Transfer all or any part of its Membership Interest so long as, prior to or in connection with such Transfer (a)- the

transferee acknowledges in writing to the Company its receipt of a copy of this Agreement and its agreement to comply herewith and be bound hereby and (b) to the extent reasonably requested by the Board, the transferor to each such Person causes to be delivered to the Company, at its sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the, Company, to the effect that (i) the contemplated Transfer of such Membership Interest to such Person does not require registration under the Securities Act of 1933 or applicable State securities or Blue Sky laws, (ii) such Person has the legal right, power and capacity to own the Membership Interest, and (iii) the contemplated Transfer of such Membership Interest to such Person will not cause the Company to be treated as a corporation for -federal income tax purposes.

1.36—Certain Permitted Transfers., Notwithstanding anything to the contrary contained in this Agreement, Founding Partners may, from time to time and in its sole discretion, without the requirement of complying with any of the provisions of this Article, Transfer its Membership Interest, in whole or in part, to Fund Investors (as defined in the Settlement Agreement).

ARTICLE 12
WITHDRAWAL; DISSOLUTION AND TERMINATION

1.37—Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the Board and upon such terms and conditions as may be specifically agreed upon between the Company and the withdrawing Member. The provisions hereof with respect to distributions upon withdrawal are exclusive, and no Member shall be entitled to claim any further or different distribution upon withdrawal under Section 18-604 of the Act or otherwise. This Section 12.1 shall not apply to Transfers permitted under Article 11 hereof.

1.38—Additional Members. The Board shall have the right to cause the Company to issue additional Membership Interests and to admit additional Members upon the acquisition of such Membership Interests upon such terms and conditions, at such time or times, and for such Capital Contributions as shall be determined by the Board, subject to any limits set forth in this Agreement. In connection with the admission of an additional Member, the Board shall amend Schedule I hereto to reflect the name and address of the additional Member.

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

(a) the determination of the Board to dissolve the Company;

(b) any other event causing a dissolution of the Company under Section 18-801 of the Act (including any applicable definitions contained in Section 18-802 of the Act);

(c) upon a sale of substantially all of the assets of the Company, except that if such disposition involves the receipt by the Company of purchase money obligations or any ongoing contingent obligations of the Company, the Company shall not be dissolved until such obligations are collected on, abandoned, sold or otherwise disposed of, including to a liquidating trust; and

(d) ___Notwithstanding anything contained herein to the contrary, no Member's death, status as a debtor in a bankruptcy case, disability, resignation, retirement or other termination of employment with the Company or any Affiliate thereof (for cause or without cause) shall result in the dissolution, winding up or termination of the Company.

1.40—Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Act. -Upon dissolution, the Board shall cause the Company to file a statement of commencement of winding up pursuant to the Act and publish the notice permitted by the Act.

12.5 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution of the Company, no further business shall be conducted except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions of this Section. -The Board shall have full authority to wind up the affairs of the Company and to make distributions as provided herein.

(b) Upon dissolution of the Company, the Board shall either sell the assets of the Company at the best price available, or the Board may distribute to the Members all or any portion of the Company's assets in kind. -If any assets are to be distributed in kind, the Board shall ascertain the fair market value (by appraisal or other reasonable means) of such assets, and each Member's Capital Account shall be charged or credited, as the case may be, as if such asset had been sold for cash at such fair market value and the net gain or net loss, recognized thereby had been allocated to and among the Members in accordance with Article 7 above.

(c) All assets of the Company shall be applied and distributed by the Board in the following order:

(i) First, to the creditors of the Company;

(ii) Second, to setting up the reserves that the Board may deem reasonably necessary for contingent or unforeseen liabilities or obligations of the Company;

(iii) Third, to the Members in an amount equal to the positive balances of their Capital Accounts in the proportion of such positive balances (after such Capital Accounts have been adjusted to reflect any Profits or Losses to be allocated to the Members in connection with the dissolution and liquidation of the Company); and

(iv) Thereafter, to the Members in accordance with their respective Ownership Percentages.

(d) Except as provided by law upon a "liquidation" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of

such Member's Capital Account shall not be considered a debt owed by such Member to the Company, or to any other Person for any purpose whatsoever.

1.41—Certificate of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed and filed with the Secretary of State of Delaware in accordance with Section 18-203 of the Act.

1.42—Return of Contribution; Nonrecourse Against Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE 13
MISCELLANEOUS PROVISIONS

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

1.44—Complete Agreement. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the within subject matter. This Agreement shall supersede and replace in its entirety the Original Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

1.45—Application of Delaware Law. This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware, and specifically the Act.

1.46—Waiver of Right to Partition. Each of the parties hereto irrevocably waives during the term of the Company any right to maintain any action for partition with respect to the property of the Company.

1.47—Amendments. Except as otherwise provided in this Agreement, amendments to this Agreement may only be made upon the written consent of the Board and those Members constituting a Majority Vote, except that (1) without the written consent of all Members, no amendment shall amend this Section 13.5, (2) no amendment may change the requisite percentage in interest of Members which is needed to give any consent or approval under this Agreement without the written consent of at least such requisite percentage, (3) no amendment shall reduce the Capital Account of any Member without the written consent of such Member, and (4) no amendment shall change in any material respect the method of allocating Profit or Loss or rights upon liquidation of the Company without the written consent of all affected Members.

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

1.49—Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

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

1.51—Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

1.52—No Partnership Intended for Nontax Purposes.–. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Delaware Uniform Partnership Act nor the Delaware Uniform Limited Partnership Act,. The Members do not intend to be partners one to another, or partners as to any third party for any purpose other than for federal, state, local or foreign tax purposes at such time as the Company has more than one Member. -To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who is incurs personal liability by reason of such wrongful representation.

1.53—Waiver.–. No provision of this Agreement will be deemed to have been waived except if such waiver is contained in a written instrument executed by the party against which such waiver is to be enforced, and no such waiver will be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given. -The rights and remedies of the parties under this Agreement are in addition to all other rights and remedies, at law or in equity, that they may have against the other parties hereto.

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

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

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

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

MEMBER:

Founding Partners Stable-Value Fund, L.P.,
a Delaware limited partnership

By: Founding Partners Capital Management Company, a Florida Corporation, its corporation, Its General Partner

By:

Daniel S. Newman, Its Court-appointed Receiver

COMPANY:

By:

Founding Partners Stable-Value Fund, L.P., Designee, LLC,

a Delaware limited partnership, its sole initial member liability company

By: Founding Partners Capital Management Company, a Florida Corporation, its General Partner

By:

By:

Daniel S. Newman, Its Court-appointed Receiver Manager

Schedule of Members

Founding Partners Stable-Value Fund, L.P.

One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami,-_FL-_33131

Attn: _Daniel S. Newman, Receiver

Facsimile: _(305) 995-6387

with a copy to:

Broad and Cassel
7777 Glades Road
Suite 300
Boca Raton, FL 33434
Attention: ~~David J. Powers~~Nina S. Gordon, P.A.
Facsimile: (561) 218-8~~9~~856~~0~~

ANNEX A

BYLAWS

OF

FOUNDING PARTNERS DESIGNEE, LLC

INTRODUCTION

A. Operating Agreement. These Bylaws are subject to the Limited Liability Company Agreement dated as of May 24, 2012 (as amended, supplemented, modified or otherwise restated from time to time, the "Operating Agreement"), of Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") among the Company and the Members party thereto. In the event of any inconsistency between the terms hereof and the terms of the Operating Agreement, the terms of the Operating Agreement shall control.

B. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

ARTICLE I
MEETINGS OF MEMBERS

Section 1. Place of Meetings and Meetings by Telephone.

Meetings of Members shall be held at any place designated by the Board. In the absence of any such designation, meetings of Members shall be held at the principal place of business of the Company. Any meeting of the Members may be held by conference telephone or similar communication equipment so long as all Members participating in the meeting can hear one another, and all Members participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 2. Call of Meetings.

Meetings of the Members may be called at any time by any Manager for the purpose of taking action upon any matter requiring the vote or authority of the Members as provided herein or in the Operating Agreement or upon any other matter as to which such vote or authority is deemed by the Board to be necessary or desirable.

Section 3. Notice of Meetings of Members.

All notices of meetings of Members shall be sent or otherwise given in accordance with Section 4 of this Article I not less than five (5) nor more than thirty (30) days before the date of the meeting. The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted.

Section 4. Manner of Giving Notice.

Notice of any meeting of Members shall be given personally or by telephone to each Member or sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by a nationally recognized overnight courier, charges prepaid, addressed to the Member at the address of that Member appearing on the books of the Company or the address given by the Member to the Company for the express purpose of receiving notices. Notice shall be deemed to have been given at the time when delivered, with respect to notices given personally or by telephone, or at the time sent or deposited in the mail, with respect to notices given by first class mail, overnight courier, telegram, telecopy or email (or similar electronic means).

Section 5. Adjourned Meeting; Notice.

Any meeting of Members, whether or not a quorum is present, may be adjourned from time to time by the vote of the holders of Membership Interests representing a majority of the Ownership Percentages represented at that meeting, either in person or by proxy. When any meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting, unless a new record date of the adjourned meeting is fixed or unless the adjournment is for more than thirty (30) days from the date set for the original meeting, in which case the Board shall set a new record date and shall give notice in accordance with the provisions of Sections 3 and 4 of this Article I. At any adjourned meeting, the Company may transact any business that might have been transacted at the original meeting.

Section 6. Quorum; Voting.

At any meeting of the Members, the holders of Membership Interests representing a majority of the Ownership Percentages, in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of Members holding a higher aggregate Ownership Percentage is required by the Operating Agreement, these Bylaws or applicable law. Except as otherwise required by the Operating Agreement, these Bylaws or applicable law (including in elections of Managers), all matters subject to a vote shall be determined by the Members whose Membership Interests represent a majority of the then outstanding Ownership Percentages. Except as otherwise expressly provided in the Operating Agreement, Managers shall be elected by way of cumulative voting.

Section 7. Waiver of Notice by Consent of Absent Members.

The transaction of a meeting of Members, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present either in person or by proxy and, if either before or after the meeting, each person entitled to vote who was not present in person or by proxy signs a written waiver of notice or a consent to a holding of the meeting or an approval of the minutes. The waiver of notice or consent shall specify either the business to be transacted or the purpose of any meeting of Members. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a

meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the beginning of the meeting.

Section 8. Member Action by Written Consent Without a Meeting.

Any action that may be taken at any meeting of Members may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the holders of Membership Interests representing a majority of the Ownership Percentages; provided, that written notice of any actions proposed to be taken by written consent and a brief description of such actions shall be provided to each Member no less than five (5) days and no more than thirty (30) days prior to the date on which such actions are proposed to become effective, Any such written consent may be executed and given by telecopy, email or similar electronic means. Such consents shall be filed with the Secretary of the Company and shall be maintained in the Company's records.

Section 9. Record Date for Member Notice, Voting and Giving Consents.

(a) For purposes of determining the Members entitled to vote or act at any meeting or adjournment thereof, the Board may fix in advance a record date which shall not be greater than sixty (60) days nor fewer than one (1) day before the date of any such meeting. If the Board does not so fix a record date, the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(b) The record date for determining the Members entitled to give consent to action in writing without a meeting (i) when no prior action of the Board has been taken, shall be the day on which the first written consent is given or (ii) when prior action of the Board has been taken, shall be such date as determined for that purpose by the Board, which record date shall not precede the date upon which the resolution fixing it is adopted by the Board and shall not be more than thirty (30) days after the date of such resolution.

(c) Only Members of record on the record date as herein determined shall have any right to vote or act at any meeting or have any right to give consent to any action relating to such record date; provided, that no Member who transfers all or part of such Member's interest after a record date (and no transferee of such interest) shall have the right to vote or act with respect to the transferred interest as regards the matter for which the record date was set.

Section 10. Proxies.

Each Member entitled to vote or act on any matter at a meeting of Members shall have the right to do so either in person or by proxy; provided, that an instrument authorizing such a proxy to act is executed by the Member in writing. A valid proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it before the vote pursuant to that proxy by a writing delivered to the Company stating that the proxy is revoked, by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing that proxy or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company before the vote pursuant to that proxy is

counted. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Except to the extent inconsistent with the provisions hereof, the Act, and judicial construction thereof by the courts of the State of Delaware, shall be applicable to proxies granted by any Member.

ARTICLE II
MANAGERS AND MEETINGS OF MANAGERS

Section 1. Powers.

The powers of the Managers shall be as provided in the Operating Agreement.

Section 2. Number of Managers.

The Board shall consist of the number of persons as shall be designated subject to and in accordance with the terms of the Operating Agreement.

Section 3. Vacancies.

Vacancies in the authorized number shall be filled in accordance with the terms of the Operating Agreement.

Section 4. Place of Meetings and Meetings by Telephone.

All meetings of the Board may be held at any place that has been designated from time to time by resolution of the Board or in any notice properly given with respect to such meeting. In the absence of such a designation, regular meetings shall be held at the principal place of business of the Company. Any meeting, regular or special, may be held by conference telephone or similar communication equipment; provided, that all Managers participating in the meeting can hear one another, and all Managers participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 5. Regular Meetings.

Regular meetings of the Board shall be held at such times and at such places as shall be fixed by approval of the Managers in accordance with the terms of the Operating Agreement. Such regular meetings may not be held without notice.

Section 6. Special Meetings.

Special meetings of the Board for any purpose or purposes may be called at any time by any of the Managers or by the holders of Membership Interests representing a majority of the Ownership Percentages. Notice of the time and place of a special meeting shall be delivered personally or by telephone to each Manager and sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by nationally recognized overnight courier, charges prepaid, addressed to each Manager at that Manager's address as it is shown on the records of the Company. If the notice is mailed, it shall be deposited in the United States mail at least five (5)

business days before the date of the meeting. If the notice is delivered personally or by telephone or by telegram, telecopy or email (or similar electronic means) or overnight courier, it shall be given at least twenty-four (24) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Manager or to a person designated by such Manager to receive such notice. Any notice of a special meeting shall state generally the nature of the business to be transacted as such meeting.

Section 7. Quorum.

In order to obtain a quorum for the transaction of business, a majority of the total number of Managers then in office must be present, including the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement, to the extent such Section is then applicable. Every act done or decision made by the affirmative vote of the Managers holding a majority of the votes present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board except as otherwise required by the Operating Agreement, these Bylaws or applicable law.

Section 8. Waiver of Notice.

Notice of any meeting need not be given to any Manager who either before or after the meeting signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent shall specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the records of the Company or be made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Manager who attends the meeting without protesting at or prior to its commencement the lack of notice to that Manager.

Section 9. Adjournment.

Managers present at any meeting entitled to cast a majority of all votes entitled to be cast by such Managers, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than thirty (30) days, in which case notice of the time and place shall be given before the time of the adjourned meeting in the manner specified in Section 6 of this Article II.

Section 10. Action Without a Meeting.

Any action to be taken by the Board at a meeting may be taken without such meeting by the written consent of the Managers. Any such written consent may be executed and given by telecopy, email or similar electronic means. Such written consents shall be filed with the minutes of the proceedings of the Board.

Section 11. Voting of Managers.

Each Manager shall be entitled to one vote on all matters upon which the Managers are entitled to vote.

Section 12. Nominating Committee.

The Board shall appoint a nominating committee consisting of three Board members, which committee will be responsible for preparing a slate of Managers for any upcoming elections of the Board. For so long as the FP Manager serves on the Board, it shall also serve on the nominating committee. The nominating committee shall maintain permanent records of its proceedings and actions and shall report to the full Board.

ARTICLE III
OFFICERS

Section 1. Officers.

The officers of the Company shall be the Chief Executive Officer (the "CEO"), President, Vice President (if appointed), Secretary, Assistant Secretary (if appointed), Treasurer, Assistant Treasurer (if appointed) and Controller (if appointed). The Company may also have, at the discretion of the Board, such other officers as may be appointed in accordance with the provisions of Section 3 of this Article III. Any number of offices may be held by the same person. Officers may, but need not, be Managers.

Section 2. Election of Officers.

The officers of the Company shall be chosen by the Board subject to the requirements in the Operating Agreement and these Bylaws and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any employment contract with the Company.

Section 3. Additional Officers.

The Board may appoint such additional officers as the business of the Company may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation of Officers.

Subject to, and only in accordance with, the terms of the Operating Agreement, and the rights, if any, of an officer under any employment contract with the Company, any officer may be removed, with or without cause, by the Board at any regular or special meeting of the Board or by such officer, if any, upon whom such power of removal may be conferred by the Board. Any officer may resign at any time by giving written notice to the Company. Unless otherwise provided in any written agreement with any such officer, any resignation by an officer shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

Section 5. Vacancies in Offices.

Subject to, and only in accordance with, the terms of the Operating Agreement, vacancy in any office because of death, disability, resignation, removal, disqualification or other cause shall be filled by the Board.

Section 6. CEO and President.

Each of the CEO and President shall, subject to the control of the Board, be responsible for the general supervision, direction and control of the business and the officers of the Company. He or she shall have such other powers and duties as may be prescribed by the Board, the Operating Agreement, or these Bylaws.

Section 7. Secretary.

The Secretary shall keep or cause to be kept at the principal place of business of the Company, or such other place as the Board may direct, a book of minutes of all meetings and actions of the Board, committees or other delegates of the Board and the Members. The Secretary shall keep or cause to be kept at the principal place of business of the Company a register or a duplicate register showing the names of all Members and their addresses, Ownership Percentage in the Company held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give or cause to be given notice of all meetings of the Members and of the Board (or committees or other delegates thereof) required to be given by these Bylaws, the Operating Agreement, or by applicable law and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

Section 8. Treasurer or Controller.

The Treasurer or Controller shall be the chief financial officer of the Company and shall keep and maintain or cause to be kept and maintained adequate and correct books and records of accounts of the properties and business transactions of the Company. The books of account shall at all reasonable times be open to inspection by any Manager. The Treasurer or Controller shall deposit all monies and other valuables in the name and to the credit of the Company with such depositaries as may be designated by the Board. He or she shall disburse the funds of the Company as may be ordered by the Board, shall render to the Board, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Company and shall have other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV
MAINTENANCE AND INSPECTION OF RECORDS

Section 1. Member List.

The Company shall maintain at its principal place of business a record of its Members, giving the names and addresses of all Members and the Ownership Percentage in the Company held by each Member. Subject to such reasonable standards (including standards governing what

information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and by the terms of the Operating Agreement, each Member has the right to obtain from the Company, from time to time upon reasonable demand for any purpose reasonably related to the Member's interest as a Member of the Company, a record of the Company's Members.

Section 2. Bylaws.

The Company shall keep at its principal place of business the original or a copy of these Bylaws, as amended or otherwise modified or restated from time to time, which shall be open to inspection by the Members at all reasonable times during usual business hours.

Section 3. Other Records.

The accounting books and records, minutes of proceedings of the Members and the Board and any committees or delegates of the Board and all other information pertaining to the Company that is required to be made available to the Members under the Act shall be kept at such place or places designated by the Board or, in the absence of such designation, at the principal place of business of the Company. The minutes and the accounting books and records and other information relating to the Company shall be kept in written form. The books and records of the Company shall be maintained in accordance with United States generally accepted , accounting principles consistently applied during the term of the Company, wherein an" transactions and other matters relating to the business, operations and properties of the Company shall be currently entered. Subject to such reasonable standards (including standards governing what information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and to the terms of the Operating Agreement, minutes, accounting books and records and all other records and information relating to the Company shall be open to inspection upon the written demand of any Member at any reasonable time during usual business hours for purposes reasonably related to the Member's interests as a Member. Any such inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts. Notwithstanding the foregoing, the Board shall have the right to keep confidential from Members (other than from any Member who is a Manager) for such period of time as the Board deems reasonable any information which the Board reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board in good faith believes is not in the best interests of the Company or could damage the Company or its business or which the Company is required by applicable law or by agreement with a third party to keep confidential.

ARTICLE V
GENERAL MATTERS

Section 1. Checks, Drafts, Evidence of Indebtedness.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable by the Company shall be signed or endorsed in such manner and by such person or persons as shall be designated from time to time in accordance with the resolution of the Board.

Section 2. Representation of Shares of Other Entities Held by Company.

Any officer of the Company authorized by the Board is authorized to vote or represent on behalf of the Company any and all shares of any corporation, partnership, limited liability company, trust or other entity, foreign or domestic, standing in the name of the Company. Such authority may be exercised in person or by a proxy duly executed by such person.

Section 3. Seal.

The Board may approve and adopt an official seal of the Company, which may be altered by them at any time. Unless otherwise required by the Board, any seal so adopted shall not be necessary to be placed on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the Company.

ARTICLE VI
AMENDMENTS AND INCORPORATION BY REFERENCE

Section 1. Amendment.

Subject to the terms of the Operating Agreement, these Bylaws may be restated, amended, supplemented or repealed only by the affirmative vote of the Board, which majority affirmative vote shall include the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement to the extent such Section is then applicable.

Section 2. Incorporation by Reference of Bylaws into Operating Agreement.

These Bylaws and any amendments hereto shall be deemed incorporated by reference in the Operating Agreement.

Section 3. Conflicts.

In the event that any provision of these Bylaws conflicts with any provision of the Operating Agreement, the terms of the Operating Agreement, as applicable, shall control.

ARTICLE VII
INDEMNIFICATION

(a) Each Person who was or is made a party to, or is threatened to be made a party to or is otherwise involved in, any action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "proceeding") by reason of the fact that he, she or it is or was a Manager or an officer of the Company, or is or was serving at the request of the Company as a Manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise Affiliated with the Company (hereinafter an "indemnitee"), whether the basis of such a proceeding is alleged action in an official capacity as a Manager, officer, employee or agent or in any other capacity while serving as a Manager, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the Act (including indemnification for negligence but excluding indemnification (i) for acts or omissions involving actual fraud, willful

misconduct, gross negligence, willful violation of applicable law, material breaches of the Bylaws, the Operating Agreement, or (ii) with respect to any transaction from which the indemnitee derived an improper personal benefit, as determined by the Board in their reasonable discretion), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith.

(b) The right to indemnification set forth in paragraph (a) of this Article VII shall include the right to have the Company pay the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). The rights to indemnification and to the advancement of expenses set forth in paragraph (a) of this Article VII and this paragraph (b) shall be contract rights, and such rights shall continue as to an indemnitee who has ceased to be a Manager, officer, employee or agent of the Company and shall inure to the benefit of the indemnitee's assigns, transferees, heirs, executors and administrators.

(c) The rights to indemnification and to the advancement of expenses granted to an indemnitee in this Article VII shall not be exclusive of any other right that any indemnitee may have or hereafter acquire under any statute, agreement, vote of the Board or otherwise. The rights to indemnification and advancement of expenses conferred upon such indemnitee herein shall be contract rights, shall vest when such person becomes a director or officer of the Company and shall continue as vested contract rights, covering acts or omissions allegedly committed while the indemnitee was a director or officer of the Company, even if such person ceases to be a director or officer of the Company.

(d) The Company may maintain insurance, at its expense, to protect itself and any Manager, officer, employee, consultant or agent of the Company or another limited liability company, corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the Act.

(e) The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of Managers and officers of the Company.

(f) Any amendment or appeal of the provisions of this Article VII shall not adversely affect any right or protection hereunder of any indemnitee in respect of any act or omission occurring prior to the time of such amendment or repeal (regardless of whether the proceeding relating to such act or omission, or any proceeding relating to such person's rights to indemnification or to advancement of expenses, is commenced before or after the time of such amendment, repeal, modification, or adoption), and any such amendment, repeal, modification, or adoption that would adversely affect such person's rights to indemnification or advancement of expenses hereunder shall be ineffective as to such person, except with respect to any proceeding that relates to or arises from (and only to the extent such proceeding relates to or arises from) any act or omission of such person occurring after the effective time of such amendment, repeal, modification or adoption.

EXHIBIT A

MANAGER INDEMNIFICATION AGREEMENT

THIS MANAGER INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this [____] day of [______], [______], by and between Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") and [____________] (the "Indemnitee").

WHEREAS, it is essential to the Company that it be able to retain and attract as managers the most capable persons available;

WHEREAS, increased corporate litigation has subjected managers to litigation risks and expenses, and the limitations on the availability of manager liability insurance have made it increasingly difficult for the Company to attract and retain such persons;

WHEREAS, the Company's governing documents permit it to indemnify its managers to the fullest extent permitted by law and permit it to make other indemnification arrangements and agreements;

WHEREAS, the Company desires to provide the Indemnitee with specific contractual assurance of the Indemnitee's rights to full indemnification against litigation risks and expenses (regardless of any amendment to or revocation of the Company's Limited Liability Company Agreement (the "Operating Agreement") or any change in the ownership of the Company or the composition of its board of managers (the "Board")); and

WHEREAS, the Company acknowledges and agrees that providing the Indemnitee with the rights provided for herein is a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and the Indemnitee do hereby covenant and agree as follows:

1. Definitions.

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a manager of the Company, (ii) in any capacity with respect to any employee benefit plan of the Company or (iii) as a manager (or comparable position) of any other Entity at the request of the Company. For purposes of subsection (iii) of this Section 1(a), a manager of the Company who is serving or has served as a manager or director of a Subsidiary shall be deemed to be serving as the request of the Company.

(b) "Entity" shall mean any corporation, partnership, limited liability company, joint venture, company, foundation, association, organization or other legal entity.

(c) "Expenses" shall mean all fees, costs and expenses incurred in connection with any Proceeding, including, without limitation, attorneys' fees, disbursements and retainers (including, without limitation, any fees, disbursements and retainers incurred by

the Indemnitee pursuant to Section 10 of this Agreement), fees and disbursements of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), court costs, transcript costs, fees of experts, travel expenses, duplicating, printing and binding costs, telephone and fax transmission charges, postage, delivery services, secretarial services and other disbursements and expenses.

(d) "Indemnifiable Expenses," "Indemnifiable Liabilities" and "Indemnifiable Amounts" shall have the meanings ascribed to those terms in Section 3(a) below.

(e) "Liabilities" shall mean judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement.

(f) "Proceeding" shall mean any threatened or pending claim, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, arbitrative or investigative, whether formal or informal, including a proceeding initiated by the Indemnitee pursuant to Section 10 of this Agreement to enforce the Indemnitee's rights hereunder.

(g) "Subsidiary" shall mean any Entity of which the Company owns (either directly or indirectly) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such Entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such Entity.

2. **Services of Indemnitee**. In consideration of the Company's covenants and commitments hereunder, the Indemnitee agrees to serve or continue to serve as a manager on the Board. However, this Agreement shall not impose any obligation on the Indemnitee or the Company to continue the Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

3. **Agreement to Indemnify**. The Company hereby agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Subject to the exceptions contained in Section 4(a) and Section 6 below, if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding (other than an action by or in the right of the Company) by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Expenses and Liabilities incurred or paid by the Indemnitee or on the Indemnitee's behalf in connection with such Proceeding (referred to herein as "Indemnifiable Expenses" and "Indemnifiable Liabilities," respectively, and collectively as "Indemnifiable Amounts").

(b) Subject to the exceptions contained in Section 4(b) and Section 6 below, if the Indemnitee was or is, or is threatened to be made, a party to or participant in any

Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses.

(c) In addition to, and without regard to any limitations on, the indemnification provided for in Section 3(a) and (h), the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Amounts if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of the Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to the Indemnitee that is finally determined to be unlawful under Delaware law.

4. Exceptions to Indemnification. The Indemnitee shall be entitled to indemnification under Section 3(a) and Section 3(h) above in all circumstances other than the following:

(a) If indemnification is requested under Section 3(a) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (i) in good faith and (ii) in a manner the Indemnitee reasonably believed to be in the best interests of the Company, or, with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Amounts hereunder.

(b) If indemnification is requested under Section 3(b) and

(i) it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (A) in good faith and (B) in a manner the Indemnitee believed to be in the best interests of the Company, then the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder.

(ii) it has been adjudicated finally by a court of competent jurisdiction that the Indemnitee is liable to the Company with respect to any claim, issue or matter involved in the Proceeding out of which the claim for indemnification has arisen, then no Indemnifiable Expenses shall be paid with respect to such claim, issue or matter unless the court of competent jurisdiction in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Indemnifiable Expenses which such court shall deem proper.

5. **Procedure for Payment of Indemnifiable Amounts**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Amounts for which the Indemnitee seeks payment under Section 3 of this Agreement and a short description of the basis for the claim. The Company shall pay such Indemnifiable Amounts to the Indemnitee within ten (10) calendar days of receipt of the request. At the request of the Company, the Indemnitee shall furnish such documentation and information as are reasonably available to the Indemnitee and necessary to establish that the Indemnitee is entitled to indemnification hereunder.

6. **Indemnification for Expenses if Indemnitee is Wholly or Partly Successful**. Notwithstanding anything contained in this Agreement to the contrary, to the extent that the Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Indemnitee shall be indemnified against all Indemnifiable Amounts in connection therewith. If the Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify the Indemnitee against all Indemnifiable Amounts in connection with each successfully resolved claim, issue or matter. For purposes of this Agreement, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter. Notwithstanding any of the foregoing, nothing herein shall be construed to limit an Indemnitee's right to indemnification which he or she would otherwise be entitled to pursuant to Section 3 hereof, regardless of the Indemnitee's success in a Proceeding.

7. **Effect of Certain Resolutions**. Neither the settlement or termination of any Proceeding nor the failure of the Company to award indemnification or to determine that indemnification is payable shall create an adverse presumption that the Indemnitee is not entitled to indemnification hereunder. In addition, the termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in the best interests of the Company or, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's action was unlawful.

8. **Agreement to Advance Expenses; Conditions**. The Company shall pay to the Indemnitee all Indemnifiable Expenses incurred by the Indemnitee in connection with any Proceeding, including a Proceeding by or in the right of the Company, in advance of the final disposition of such Proceeding. The Indemnitee hereby undertakes to repay the amount of Indemnifiable Expenses paid to the Indemnitee if it is finally determined by a court of competent jurisdiction that the Indemnitee is not entitled under this Agreement to, or is prohibited by applicable law from, indemnification with respect to such Indemnifiable Expenses. For avoidance of doubt, any advances and undertakings to repay shall be unsecured and interest free.

9. **Procedure for Advance Payment of Expenses**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Expenses for which the Indemnitee seeks advancement under Section 8 of this Agreement, together with documentation evidencing that the Indemnitee has incurred such Indemnifiable Expenses. Payment of Indemnifiable Expenses under Section 8 shall be made no later than ten (10) calendar days after the Company's receipt of such request.

10. Remedies of Indemnitees.

(a) Right to Petition Court. In the event that the Indemnitee makes a request for payment of Indemnifiable Amounts under Section 3 and Section 5 herein or a request for an advancement of Indemnifiable Expenses under Section 8 and Section 9 herein and the Company fails to make such payment or advancement in a timely manner pursuant to the terms of this Agreement, the Indemnitee may petition a court to enforce the Company's obligations under this Agreement.

(b) Expenses. The Company agrees to reimburse the Indemnitee in full for any Expenses incurred by the Indemnitee in connection with investigating, preparing for, litigating, defending or settling any action brought by the Indemnitee under Section 10(a) above; provided, however, that if the Indemnitee is unsuccessful, on the merits in such action, then the Company shall have no obligation to the Indemnitee under this Section 10(b).

(c) Validity of Agreement. The Company shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 10(a) above, that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Company is bound by all the provisions of this Agreement.

(d) Failure to Act Not a Defense. The failure of the Company (including the Board or any committee thereof, independent legal counsel, or members) to make a determination concerning the permissibility of the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses under this Agreement shall not be a defense in any action brought under Section 10(a) above, and shall not create a presumption that such payment or advancement is not permissible.

11. Notice by Indemnitee. The Indemnitee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, or other document relating to any Proceeding which may result in the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify the Indemnitee from the right to receive payments of Indemnifiable Amounts or advancements of Indemnifiable Expenses.

12. Representations and Warranties of the Company. The Company hereby represents and warrants to the Indemnitee as follows:

(a) Authority. The Company has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Company.

(b) Enforceability. This Agreement, when executed and delivered by the Company in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by equitable principles, applicable

bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.

13. Contract Rights Not Exclusive; Survival of Rights; Insurance.

(a) The rights to payment of Indemnifiable Amounts and advancement of Indemnifiable Expenses provided by this Agreement shall be in addition to, but not exclusive of, any other rights which the Indemnitee may have at any time under applicable law, the Operating Agreement, or any other agreement, vote of members or managers (or a committee of managers), or otherwise, both as to action in the Indemnitee's official capacity and as to action in any other capacity as a result of the Indemnitee's serving as a manager of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Indemnitee shall be covered by any managers and officers liability insurance and any other insurance policy or policies providing liability insurance for managers, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, and the Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such manager, officer, employee, agent or fiduciary under such policy or policies. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

14. Successors. This Agreement shall be (a) binding upon all successors and assigns of the Company (including any transferee of all or a substantial portion of the business, equity and/or assets of the Company and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the heirs, personal representatives, executors and administrators of the Indemnitee. This Agreement shall continue for the benefit of the Indemnitee and such heirs, personal representatives, executors and administrators after the Indemnitee has ceased to have Corporate Status.

15. Change in Law. To the extent that a change in Delaware law (whether by statute or judicial decision) shall permit broader indemnification or advancement of expenses than is provided under the terms of the Operating Agreement and this Agreement, the Indemnitee shall

be entitled to such broader indemnification and advancements, and this Agreement shall be deemed to be amended to such extent.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any clause thereof, shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, in whole or in part, such provision or clause shall be limited or modified in its application to the minimum extent necessary to make such provision or clause valid, legal and enforceable, and the remaining provisions and clauses of this Agreement shall remain fully enforceable and binding on the parties.

17. Modifications and Waiver. Except as provided in Section 15 above with respect to changes in Delaware law which broaden the right of the Indemnitee to be indemnified by the Company, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement (whether or not similar), nor shall such waiver constitute a continuing waiver,

18. General Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) when transmitted by facsimile and receipt is acknowledged, or (c) if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed

(i) If to the Indemnitee, to:

____
____
____
Fax: ________________________
Tel: ________________________

(ii) If to the Company, to: Founding Partners Designee, LLC

____
____
____
Fax: ________________________
Tel: ________________________

or to such other address as may have been furnished in the same manner by any party to the others.

19. Governing Law. This Agreement shall be governed by and construed and enforced under the laws of Delaware without giving effect to the provisions thereof relating to conflicts of law.

20. Consent to Jurisdiction. Each of the Company and the Indemnitee hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware and any United States District Court of competent jurisdiction located in the State of Delaware (the "Courts"), for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any litigation relating thereto except in such Courts. Each of the Company and the Indemnitee hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement in the Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such Proceeding brought in any such Court has been brought in an inconvenient forum.

21. This Agreement supercedes any and all prior agreements between the Company and the Indemnitee regarding the terms and conditions of the Indemnitee's indemnification by the Company.

[SIGNATURES ON FOLLOWING PAGE(S).]

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

FOUNDING PARTNERS DESIGNEE, LLC

By: ______________________________
Name:
Title:

INDEMNITEE:

By: ______________________________
Name:
Title:

MANAGER INDEMNIFICATION AGREEMENT

THIS MANAGER INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this [ ] day of [ ], [ ], by and between Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") and [ ] (the "Indemnitee").

WHEREAS, it is essential to the Company that it be able to retain and attract as managers the most capable persons available;

WHEREAS, increased corporate litigation has subjected managers to litigation risks and expenses, and the limitations on the availability of manager liability insurance have made it increasingly difficult for the Company to attract and retain such persons;

WHEREAS, the Company's governing documents permit it to indemnify its managers to the fullest extent permitted by law and permit it to make other indemnification arrangements and agreements;

WHEREAS, the Company desires to provide the Indemnitee with specific contractual assurance of the Indemnitee's rights to full indemnification against litigation risks and expenses (regardless of any amendment to or revocation of the Company's Limited Liability Company Agreement (the "Operating Agreement") or any change in the ownership of the Company or the composition of its board of managers (the "Board")); and

WHEREAS, the Company acknowledges and agrees that providing the Indemnitee with the rights provided for herein is a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and the Indemnitee do hereby covenant and agree as follows:

1. Definitions.

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a manager of the Company, (ii) in any capacity with respect to any employee benefit plan of the Company or (iii) as a manager (or comparable position) of any other Entity at the request of the Company. For purposes of subsection (iii) of this Section l(a), a manager of the Company who is serving or has served as a manager or director of a Subsidiary shall be deemed to be serving as the request of the Company.

(b) "Entity" shall mean any corporation, partnership, limited liability company, joint venture, company, foundation, association, organization or other legal entity.

(c) "Expenses" shall mean all fees, costs and expenses incurred in connection with any Proceeding, including, without limitation, attorneys' fees, disbursements and retainers (including, without limitation, any fees, disbursements and retainers incurred by the Indemnitee pursuant to Section 10 of this Agreement), fees and disbursements of expert witnesses, private investigators and professional advisors (including, without

limitation, accountants and investment bankers), court costs, transcript costs, fees of experts, travel expenses, duplicating, printing and binding costs, telephone and fax transmission charges, postage, delivery services, secretarial services and other disbursements and expenses.

(d) "Indemnifiable Expenses," "Indemnifiable Liabilities" and "Indemnifiable Amounts" shall have the meanings ascribed to those terms in Section 3(a) below.

(e) "Investor Steering Committee" shall mean the committee of representatives of SSR Capital Partners, LP, Edge Capital Investments Ltd., Rhino Holdings, Convergent Wealth Advisors and Bermuda Commercial Bank Limited which addressed issues relating to the settlement of claims against Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise Healthcare, Inc., Success Healthcare, LLC and their affiliates (collectively, the "Sun Group") by the receivership of Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (collectively, "Founding Partners").

(f) "Liabilities" shall mean judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement.

(g) "Proceeding" shall mean any threatened or pending claim, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, arbitrative or investigative, whether formal or informal, including a proceeding initiated by the Indemnitee pursuant to Section 10 of this Agreement to enforce the Indemnitee's rights hereunder.

(h) "Subsidiary" shall mean any Entity of which the Company owns (either directly or indirectly) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such Entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such Entity.

2. Services of Indemnitee. In consideration of the Company's covenants and commitments hereunder, the Indemnitee agrees to serve or continue to serve as a manager on the Board. However, this Agreement shall not impose any obligation on the Indemnitee or the Company to continue the Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

3. Agreement to Indemnify. The Company hereby agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Subject to the exceptions contained in Section 4(a) and Section 6 below, if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding (other than an action by or in the right of the Company) by reason of the

Error! Unknown document property name.

Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Expenses and Liabilities incurred or paid by the Indemnitee or on the Indemnitee's behalf in connection with such Proceeding (referred to herein as "Indemnifiable Expenses" and "Indemnifiable Liabilities," respectively, and collectively as "Indemnifiable Amounts").

(b) Subject to the exceptions contained in Section 4(b) and Section 6 below, if the Indemnitee was or is, or is threatened to be made, a party to or participant in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses.

(c) In addition to, and without regard to any limitations on, the indemnification provided for in Section 3(a) and (b), the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Amounts if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of the Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to the Indemnitee that is finally determined to be unlawful under Delaware law.

(d) Subject to the exceptions contained in Section 4(c) if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding principally by reason of the Indemnitee's having been a member of the Investor Steering Committee, then the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses, but shall not be indemnified for any Indemnifiable Liabilities related thereto.

4. **Exceptions to Indemnification**. The Indemnitee shall be entitled to indemnification under Section 3(a) and Section 3(b) above in all circumstances other than the following:

(a) If indemnification is requested under Section 3(a) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (i) in good faith and (ii) in a manner the Indemnitee reasonably believed to be in the best interests of the Company, or, with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Amounts hereunder.

(b) If indemnification is requested under Section 3(b) and

(i) it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for

Error! Unknown document property name.

indemnification has arisen, the Indemnitee failed to act (A) in good faith and (B) in a manner the Indemnitee believed to be in the best interests of the Company, then the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder.

(ii) it has been adjudicated finally by a court of competent jurisdiction that the Indemnitee is liable to the Company with respect to any claim, issue or matter involved in the Proceeding out of which the claim for indemnification has arisen, then no Indemnifiable Expenses shall be paid with respect to such claim, issue or matter unless the court of competent jurisdiction in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Indemnifiable Expenses which such court shall deem proper.

(c) If indemnification is requested under Section 3(d) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee (i) failed to act in good faith, or (ii) engaged in gross negligence, fraud or self-dealing, or with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder. Moreover, the indemnification provided for in Section 3(d) shall not apply to any Proceedings involving (x) any claims made by any member(s) of the Investor Steering Committee against any other member(s) of the Investor Steering Committee, or (y) acts or omissions by the Indemnitee as a member of the Investor Steering Committee which were not in furtherance of the settlement of claims between the Sun Group and Founding Partners, as reasonably determined by the other members of the Company's Board.

5. Procedure for Payment of Indemnifiable Amounts. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Amounts for which the Indemnitee seeks payment under Section 3 of this Agreement and a short description of the basis for the claim. The Company shall pay such Indemnifiable Amounts to the Indemnitee within ten (10) calendar days of receipt of the request. At the request of the Company, the Indemnitee shall furnish such documentation and information as are reasonably available to the Indemnitee and necessary to establish that the Indemnitee is entitled to indemnification hereunder.

6. Indemnification for Expenses if Indemnitee is Wholly or Partly Successful. Notwithstanding anything contained in this Agreement to the contrary, to the extent that the Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Indemnitee shall be indemnified against all Indemnifiable Amounts in connection therewith. If the Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify the Indemnitee against all Indemnifiable Amounts in connection with each successfully resolved claim, issue or matter. For purposes of this Agreement, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as

to such claim, issue or matter. Notwithstanding any of the foregoing, nothing herein shall be construed to limit an Indemnitee's right to indemnification which he or she would otherwise be entitled to pursuant to Section 3 hereof, regardless of the Indemnitee's success in a Proceeding.

7. **Effect of Certain Resolutions**. Neither the settlement or termination of any Proceeding nor the failure of the Company to award indemnification or to determine that indemnification is payable shall create an adverse presumption that the Indemnitee is not entitled to indemnification hereunder. In addition, the termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in the best interests of the Company or, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's action was unlawful.

8. **Agreement to Advance Expenses; Conditions**. The Company shall pay to the Indemnitee all Indemnifiable Expenses incurred by the Indemnitee in connection with any Proceeding, including a Proceeding by or in the right of the Company, in advance of the final disposition of such Proceeding. The Indemnitee hereby undertakes to repay the amount of Indemnifiable Expenses paid to the Indemnitee if it is finally determined by a court of competent jurisdiction that the Indemnitee is not entitled under this Agreement to, or is prohibited by applicable law from, indemnification with respect to such Indemnifiable Expenses. For avoidance of doubt, any advances and undertakings to repay shall be unsecured and interest free.

9. **Procedure for Advance Payment of Expenses**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Expenses for which the Indemnitee seeks advancement under Section 8 of this Agreement, together with documentation evidencing that the Indemnitee has incurred such Indemnifiable Expenses. Payment of Indemnifiable Expenses under Section 8 shall be made no later than ten (10) calendar days after the Company's receipt of such request.

10. **Remedies of Indemnitees.**

(a) Right to Petition Court. In the event that the Indemnitee makes a request for payment of Indemnifiable Amounts under Section 3 and Section 5 herein or a request for an advancement of Indemnifiable Expenses under Sections 8 and Section 9 herein and the Company fails to make such payment or advancement in a timely manner pursuant to the terms of this Agreement, the Indemnitee may petition a court to enforce the Company's obligations under this Agreement.

(b) Expenses. The Company agrees to reimburse the Indemnitee in full for any Expenses incurred by the Indemnitee in connection with investigating, preparing for, litigating, defending or settling any action brought by the Indemnitee under Section 10(a) above; provided, however, that if the Indemnitee is unsuccessful, on the merits in such action, then the Company shall have no obligation to the Indemnitee under this Section 10(b).

(c) Validity of Agreement. The Company shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 10(a) above,

that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Company is bound by all the provisions of this Agreement.

(d) Failure to Act Not a Defense. The failure of the Company (including the Board or any committee thereof, independent legal counsel, or members) to make a determination concerning the permissibility of the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses under this Agreement shall not be a defense in any action brought under Section 10(a) above, and shall not create a presumption that such payment or advancement is not permissible.

11. Notice by Indemnitee. The Indemnitee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, or other document relating to any Proceeding which may result in the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify the Indemnitee from the right to receive payments of Indemnifiable Amounts or advancements of Indemnifiable Expenses.

12. Representations and Warranties of the Company. The Company hereby represents and warrants to the Indemnitee as follows:

(a) Authority. The Company has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Company.

(b) Enforceability. This Agreement, when executed and delivered by the Company in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by equitable principles, applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.

13. Contract Rights Not Exclusive; Survival of Rights; Insurance.

(a) The rights to payment of Indemnifiable Amounts and advancement of Indemnifiable Expenses provided by this Agreement shall be in addition to, but not exclusive of, any other rights which the Indemnitee may have at any time under applicable law, the Operating Agreement, or any other agreement, vote of members or managers (or a committee of managers), or otherwise, both as to action in the Indemnitee's official capacity and as to action in any other capacity as a result of the Indemnitee's serving as a manager of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every

other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Indemnitee shall be covered by any managers and officers liability insurance and any other insurance policy or policies providing liability insurance for managers, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, and the Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such manager, officer, employee, agent or fiduciary under such policy or policies. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

14. Successors. This Agreement shall be (a) binding upon all successors and assigns of the Company (including any transferee of all or a substantial portion of the business, equity and/or assets of the Company and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the heirs, personal representatives, executors and administrators of the Indemnitee. This Agreement shall continue for the benefit of the Indemnitee and such heirs, personal representatives, executors and administrators after the Indemnitee has ceased to have Corporate Status.

15. Change in Law. To the extent that a change in Delaware law (whether by statute or judicial decision) shall permit broader indemnification or advancement of expenses than is provided under the terms of the Operating Agreement and this Agreement, the Indemnitee shall be entitled to such broader indemnification and advancements, and this Agreement shall be deemed to be amended to such extent.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any clause thereof, shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, in whole or in part, such provision or clause shall be limited or modified in its application to the minimum extent necessary to make such provision or clause valid, legal and enforceable, and the remaining provisions and clauses of this Agreement shall remain fully enforceable and binding on the parties.

17. Modifications and Waiver. Except as provided in Section 15 above with respect to changes in Delaware law which broaden the right of the Indemnitee to be indemnified by the Company, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement (whether or not similar), nor shall such waiver constitute a continuing waiver.

18. General Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) when transmitted by facsimile and receipt is acknowledged, or (c) if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed

(i) If to the Indemnitee, to:

____
____
____
Fax: ____________________
Tel: ____________________

(ii) If to the Company, to:

Founding Partners Designee, LLC
____
____
____
Fax: ____________________
Tel: ____________________

or to such other address as may have been furnished in the same manner by any party to the others.

19. Governing Law. This Agreement shall be governed by and construed and enforced under the laws of Delaware without giving effect to the provisions thereof relating to conflicts of law.

20. Consent to Jurisdiction. Each of the Company and the Indemnitee hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware and any United States District Court of competent jurisdiction located in the State of Delaware (the "Courts"), for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any litigation relating thereto except in such Courts. Each of the Company and the Indemnitee hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement in the Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such Proceeding brought in any such Court has been brought in an inconvenient forum.

21. This Agreement supercedes any and all prior agreements between the Company and the Indemnitee regarding the terms and conditions of the Indemnitee's indemnification by the Company.

[SIGNATURES ON FOLLOWING PAGE(S).]

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

FOUNDING PARTNERS DESIGNEE, LLC

By: ________________________________
Name:
Title:

INDEMNITEE:

____
[__________]

SECOND AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

FOUNDING PARTNERS DESIGNEE, LLC

This Second Amended and Restated Limited Liability Company Agreement of FOUNDING PARTNERS DESIGNEE, LLC (the "Company"), a Delaware limited liability company, is made and entered into as of ~~March ___~~, July [ ], 2014, by and between the Company and FOUNDING PARTNERS STABLE-VALUE FUND, L.P., a Delaware limited partnership ("Founding Partners"), and such other Persons as may be admitted from time to time as Members of the Company in accordance with the terms of this Agreement and the Act (as hereinafter defined).

~~The parties hereto desire to amend and restate the existing Limited Liability Company Agreement of the Company dated May 24, 2012 (the "Original Agreement"), in order to make certain changes to any such Original Agreement as hereinafter provided.~~

~~NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to amend and restate the Original Agreement as follows:~~

WITNESSETH:

WHEREAS, the Certificate of Formation of the Company has ~~previously~~ been filed with the Secretary of State of Delaware on May 24, 2012, in accordance with the provisions of the Act; ~~and~~

WHEREAS, the Company and Founding Partners ~~desires~~had entered into the Limited Liability Company Agreement of the Company, dated as of May 24, 2012, which agreement was amended and restated on March 12, 2014 (collectively, the "Original Agreement"); and

WHEREAS, the Company and Founding Partners desire to amend and restate the Original Agreement in its entirety to read as set forth herein ~~the manner in which such limited liability company shall be governed and operated~~.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, Founding Partners and any other Persons who subsequently acquire a Membership Interest, intending to be legally bound hereby, agree as follows.

ARTICLE 1
DEFINITIONS

The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters.

"*Act*" shall mean the Delaware Limited Liability Company Act, Title 6 of the Delaware Code, Section 18-‑101 et seq., as same may be amended from time to time.,

———"*Affiliate*" shall mean any other Person directly or indirectly owning a majority interest in such Person and controlling such Person or owning a minority interest in such Person and controlling such pPerson by virtue of contractual provisions, or a Person who is majority owned by such Person and controlled by such Person or who is minority owned by such Person and controlled by such Person by virtue of contractual provisions; provided, however, that no party to this Agreement shall be considered an affiliate of any other party solely by reason of its investment in the Company.

"*Agreement*" shall mean this Second Amended and Restated Limited Liability Company Agreement as originally executed and as amended from time to time.

"*Associate*" has the meaning ascribed to such term in Rule 12b-2 of the rules promulgated under the Exchange Act.

"*Beneficial Owner*" is a Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares, or has the right to acquire (whether such right is exercisable immediately or only after the passage of time), (i) voting power in the Company, which includes the power to vote, or to direct the voting of, any Equity Security and/or (ii) investment power in the Company, which includes the power to dispose, or to direct the disposition of, any Equity Security. The terms "*Beneficially Own*" and "*Beneficial Ownership*" shall have correlative meanings.

"*Board*" means the Board of Managers of the Company.

"*Business Combination*" means:

(i) any merger or consolidation of the Company or any Subsidiary thereof with (A) an Interested Member, or (B) any other Person (whether or not itself an Interested Member) that is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Member;

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with, or proposed by or on behalf of, an Interested Member or an Affiliate or Associate of an Interested Member of any property or assets of the Company or any Subsidiary thereof having an aggregate fair market value as of the date of the consummation of the transaction giving rise to the Business Combination of not less than 10% of the fair market value of the Company as of such date;

(iii) the issuance or transfer by the Company or any Subsidiary thereof (in one transaction or a series of transactions) of any securities of the Company or any Subsidiary thereof to, or proposed by or on behalf of, an Interested Member or an Affiliate or Associate of an Interested Member in exchange for cash, securities or other property (or a combination thereof) having an aggregate fair market value as of the date of the consummation of the transaction giving rise to the Business Combination of not less than 10% of the fair market value of the Company as of such date;

(iv) any spin–off or split–up of any kind of the Company or any Subsidiary thereof, proposed by or on behalf of an Interested Member or any of its Affiliates or Associates;

(v) any reclassification of the Membership Interest or securities of a Subsidiary of the Company (including any reverse split of Shares or such securities) or recapitalization of the Company or such Subsidiary, or any merger or consolidation of the Company or such Subsidiary with any other Subsidiary thereof, or any other transaction (whether or not with or into or otherwise involving an Interested Member), that has the effect, directly or indirectly, of increasing the proportionate share of (A) the Membership Interest or such securities or securities of such Subsidiary which are Beneficially Owned by an Interested Member or any of its Affiliates or Associates or (B) any securities of the Company or such Subsidiary that are convertible into or exchangeable for Membership Interest or such securities of such Subsidiary, that are directly or indirectly owned by an Interested Member or any of its Affiliates or Associates; or

(vi) any agreement, contract or other arrangement providing for any one or more of the actions specified in clauses (i) through (v) above.

"*Capital Account*" shall mean a financial account to be established and maintained by the Company for each Member as computed from time to time in accordance with the capital account maintenance rules set forth in Regulations Section 1.704-‑1(b)(2), as such Regulations may be amended from time to time.

"*Capital Contribution*" shall mean the total amount of money or the net fair market value of property (as determined in good faith by the Board) contributed by each Member to the Company pursuant to the terms of this Agreement.

"*Code*" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"*Company*" shall mean Founding Partners Designee, LLC, a Delaware limited liability company.

"*Company Minimum Gain*" shall mean the amount determined in accordance with Regulations Section 1.704--2(d) by (i) computing with respect to each Nonrecourse Liability of the Company the amount of income or gain, if any, that would be realized by the Company if it disposed of the property securing such Nonrecourse Liability in full satisfaction thereof, and (ii) aggregating all separate amounts so computed.

"*Continuing Manager*" means (i) any Manager who (A) is neither the Interested Member involved in the Business Combination as to which a determination of Continuing Directors is provided hereunder, nor an Affiliate, Associate, employee, agent or nominee of such Interested Member, or a relative of any of the foregoing, and (B) was a member of the Board prior to the time that such Interested Member became an Interested Member, or (ii) any successor of a Continuing Director described in clause (i) above who is recommended or elected to succeed a Continuing Director by the affirmative vote of a majority of Continuing Directors then on the Board.

"*Court*" shall mean the United States District Court, Middle District of Florida – Fort Myers Division, which appointed the Receiver of Founding Partners and certain of its Affiliates.

"*Effective Time*" shall mean immediately after such time as Founding Partners first owns less than a ten (10%) Ownership Percentage on or after the date of this Agreement (for the avoidance of doubt, after giving effect to the Transfers contemplated by the Settlement Agreement but not any other Transfers).

"*Entity*" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"*Equity Securities*" means all Membership Interests of the Company, all securities convertible or exchangeable for Membership Interests of the Company, and all options, warrants, and other rights to purchase or otherwise acquire Membership Interests from the Company, including any unit appreciation or similar rights, contractual or otherwise.

"*Excepted Holder*" means any Person who as of the Effective Time exceeded the Ownership Limit.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, supplemented or restated from time to time and any successor to such statute, and the rules and regulations promulgated thereunder.

"*Fiscal Year*" shall mean the annual accounting period specified in Section 10.1 hereof.

"*Founding Partners*" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and the initial Member of the Company.

"*Interested Member*" means any Person (other than the Company or any Subsidiary of the Company, any employee benefit plan maintained by the Company or any Subsidiary thereof or any trustee or fiduciary with respect to any such plan when acting in such capacity) that:

(i) is, or was at any time within the three–year period immediately prior to the date in question, the Beneficial Owner of 15% or more of the Profits, Losses, distributions or voting rights of the Company and who did not become the Beneficial Owner of such percentage pursuant to a transaction that was approved by the affirmative vote of a majority of the Board; or

(ii) is a transferee, assignee of, or has otherwise succeeded to, the Equity Securities of which an Interested Member was the Beneficial Owner at any time within the three–year period immediately prior to the date in question, if such transfer, assignment or succession occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act;

provided, however, that a Person who was the Beneficial Owner of 15% or more of the Profits, Losses, distributions or voting rights of the Company as of the Effective Time shall not be an Interested Member unless and until such Person or its Affiliates or Associates directly or indirectly acquire any additional Beneficial Ownership in the Company.

"*Majority Vote*" –shall mean the affirmative vote ~~or written consent~~ of Members then owning of record Membership Interests, in the aggregate, representing a majority of the Ownership Percentages owned by all Members.

"*Manager*" means any Person that is a member of the Board.

"*Member*" shall mean Founding Partners Stable-Value Fund, L.P., a Delaware limited partnership, and any other Person that hereafter acquires a Membership Interest in compliance with the terms of this Agreement.

"*Member Nonrecourse Debt*" shall have the meaning ascribed to the term "partner nonrecoursenon-recourse debt" in Regulations Section 1.704--2(b)(4).

"*Member Nonrecourse Deductions*" shall mean any and all items of loss, deduction or expenditure (described in Section 705(a)(2)(B) of the Code) that, in accordance with the principles of Regulations Section 1.704--2(i)(2), are attributable to Member Nonrecourse Debt.

"*Membership Interest*" shall mean a Member's entire interest in the Company, including such Member's share of the Profits, Losses and distributions of the Company, and the Member's right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement or the Act.

"*Minimum Gain Attributable to Member Nonrecourse Debt*" shall have the meaning ascribed to the term "partner nonrecourse debt minimum gain" in Regulations Section 1.704--2(i)(2).

"*Nonrecourse Deductions*" shall mean that amount determined in accordance with Regulations Section 1.704--2(b)(1).

"*Nonrecourse Liability*" shall mean any liability of the Company treated as a nonrecourse liability under Regulations Section 1.704--2(b)(3).

"*Original Agreement*" shall mean, collectively, the Limited Liability Company Agreement of the Company, dated as of May 24, 2012, and the Amended and Restated Limited Liability Company Agreement of the Company, dated as of March 12, 2014.

"*Ownership Limit*" shall mean, with respect to any Person, if such Person, together with such Person's Affiliates and Associates, has an Ownership Percentage of 10%, or otherwise Beneficially Owns 10% of any Equity Securities or of the Profits, Losses, distributions or voting rights of the Company.

"*Ownership Percentage*" shall mean a Member's percentage interest in the Profits, Losses and distributions of the Company as adjusted under this Agreement. The initial Ownership Percentages are as follows:

Founding Partners:—100%

"*Person*" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and permitted assigns of any such Person where the context so

permits, or any group (as that term is used for purposes of Section 13(d)(3) of the Exchange Act) thereof.

"*Profit or Loss*" shall mean, for each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments: (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; and (b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profit or Loss, shall be subtracted from such taxable income or loss. Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 7.2 hereof shall not be taken into account in computing Profit or Loss.

———"*Receiver*"- shall mean Daniel S. Newman, solely in his capacity as the Court appointed receiver of Founding Partners and certain of its Affiliates.

"*Regulations*" shall mean the Federal Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"*Securities Act*" means the Securities Act of 1933, as amended, supplemented or restated from time to time and any successor to such statute, and the rules and regulations promulgated thereunder.

"*Settlement Agreement*" shall mean that certain Settlement Agreement to be entered into, subject to Court approval, by and among Sun Capital Healthcare, Inc., a Florida corporation; Sun Capital, Inc., a Florida corporation; Success Healthcare, LLC, a California limited liability company; Promise Healthcare, Inc., a Florida corporation; Peter R. Baronoff, an individual; Howard B. Koslow, an individual; Lawrence Leder, an individual; Malinda Baronoff, an individual; Jane Koslow, an individual; Carole Leder, an individual; Mark Dawson, an individual; the subsidiaries and affiliates of SCHI, SCI, Success and Promise identified on Annex I attached thereto; Founding Partners; Founding Partners Global Fund, Ltd., a corporation organized under the laws of the Cayman Islands; Founding Partners Stable-Value Fund II, L.P., a Delaware limited partnership; Founding Partners Hybrid-Value Fund, L.P., a Delaware limited partnership; and Receiver.

"*Subsidiary*"- means, with respect to any Person, any Entity that is owned or controlled, directly or indirectly, by (i) such Person, (ii) such person and one or more Subsidiaries of such Person, or (iii) one or more subsidiaries of such Person. For purposes of this definition, the term

"controlled" means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"*Transfer*" shall mean a sale, assignment, transfer or other disposition (voluntarily or by operation of law) of, or the granting or creating of a lien, encumbrance or security interest in, a Membership Interest, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any securities or rights convertible into or exchangeable for Membership Interest or any interest in Membership Interest or any exercise of any such conversion or exchange right, or (c) Transfers of interests in other entities that result in changes in Beneficial Ownership of Membership Interests.

ARTICLE 2

ORGANIZATIONAL MATTERS

2.1 Name.. The name of the Company is Founding Partners Designee, LLC.

2.2 Principal Place of Business.. The principal place of business of the Company is 999-Yamato Road, 3rd Floor, Boca Raton, Florida -33431. The Company may locate its places of business and registered office at any other place or places as the Board may from time to time deem advisable.

2.3 Registered Office and Registered Agent. The Company's initial registered agent within the State of Delaware is Capitol Services, Inc. and the registered office of the Company with the State of Delaware is 615 South Dupont Highway, Dover, Delaware 19901,. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of Delaware pursuant to the Act and the applicable rules promulgated thereunder.

2.4 Term. The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of Delaware and shall continue in perpetuity thereafter until dissolved in accordance with the provisions of this Agreement or the Act.

2.5 Tax Status. The undersigned intends for the Company to be treated as a partnership for federal income tax purposes if the Company has two or more Members, and otherwise as an entity that is disregarded as an entity separate from its owner for federal income tax purposes pursuant to Regulations Section 301.7701--3.

2.6 Bylaws. The bylaws of the Company ~~attached hereto as~~are hereby amended and restated in their entirety to read as set forth on Annex A (as amended, restated, supplemented or otherwise modified from time to time, the "Bylaws~~") are hereby adopted and approved by the Members.~~"). This Agreement and the Bylaws are intended to serve as a "limited liability company agreement," as such term is defined in Section 18-101(7) of the Act. The Bylaws and any amendments thereto in accordance with the terms of the Bylaws shall be deemed incorporated by reference in this Agreement.

ARTICLE 3
BUSINESS OF COMPANY

3.1 Purposes. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities is necessary or incidental to the foregoing. The Company shall have all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

3.2 Use of Subsidiaries. It is contemplated that the Company will own one or more Subsidiaries. The Board may form and/or acquire such Subsidiaries from time to time. It is the intention of the Members that the use of Subsidiaries not alter their rights herein and references in this Agreement to the Company shall include any Company Subsidiaries where appropriate to accomplish that intent.

ARTICLE 4
SCHEDULE OF MEMBERS

——The name and business, mailing or residence address of each of the Members of the Company are set forth on Schedule I hereto. The Board shall amend Schedule I from time to time to accurately reflect the names and business, mailing or residence addresses of each of the Members and each of the Persons who shall become Members after the date hereof.

ARTICLE 5
CONTRIBUTIONS TO THE COMPANY

5.1 Members' Capital Contributions.. Simultaneously with the execution of ~~this~~the Original Agreement, the initial Member ~~shall make~~made the following Capital Contribution in cash to the Company:

~~Member~~	~~Capital Contribution~~
~~Founding Partners~~	~~$100~~

Member	Capital Contribution
Founding Partners	$100

5.2 Reimbursement of Expenses. The Company shall reimburse the initial Member for all direct out--of--pocket costs incurred in connection with the formation of the Company.

5.3 Third--Party Loans.. In the event that the Board shall determine, at any time and from time to time, that the Company requires additional funds, the Board shall have the right to

cause the Company to borrow additional funds from a third--party lender upon such terms and conditions as the Board deem reasonable and appropriate under the circumstances.

5.4 Member Loans. In the event the Company is unable to obtain any third--party loans upon terms acceptable to the Board or the Board determines that the Company requires funds in addition to any amounts borrowed under Section 5.3 above, then the Members may make loans to the Company in such amounts and upon such terms and conditions authorized by the Board. Any loan made by a Member shall not be treated as a Capital Contribution for any purpose under this Agreement, nor shall any such loan entitle a Member to any increase in his or her share of the Profits, Losses or distributions of the Company. Any loan from a Member shall be repayable on the terms and conditions and shall bear interest at the rate agreed to by the lending Member and the Board, if applicable.

5.5 Additional Capital Contributions. The Members shall have the right to make additional Capital Contributions to the Company from time to time, but no Member shall be obligated to make any additional Capital Contributions to the Company.

5.6 Withdrawal or Reduction of Members' Contributions to Capital. A Member shall not receive out of the Company's property any part of such Member's Capital Contribution until all liabilities of the Company have been paid or there remains property of the Company sufficient to pay them. A Member, irrespective of the nature of such Member's Capital Contribution, has only the right to demand and receive cash in return for such Capital Contribution. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein. The Capital Contribution of a Member shall not be considered as a liability of the Company.

ARTICLE 6
DISTRIBUTIONS

6.1 Distributions. The Company shall make distributions at such times and in such amounts as the Board shall determine to the Members in accordance with their Ownership Percentages.

6.2 Dissolution.. Notwithstanding Section 6.1 hereof, upon dissolution of the Company provided in Section 12.3 hereof, all distributions occurring thereafter shall be made in accordance with Section 12.5.

6.16.3 Limitation Upon Distributions. No distributions shall be made to the Members if prohibited by the Act.. No distributions shall be made to the Members if prohibited by the Act.

6.4 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state, local or other tax law with respect to any payment or distribution to the Members shall be treated as amounts distributed to the Members pursuant to this Article VI for all purposes under this Agreement.

ARTICLE 7
ALLOCATIONS

7.1 Profits and Losses. Subject to Section 2.5, any Profit or Loss realized by the Company for any Fiscal Year or other period shall be allocated among the Members in accordance with their respective Ownership Percentages. Notwithstanding the foregoing, no Loss shall be allocated to a Member to the extent it would cause or increase a deficit balance in such Member's Capital Account. In such case, the Loss shall be allocated to the Members with positive balances in their Capital Accounts in proportion to such balances, and appropriate adjustments shall be made to the allocation of subsequent Profit in order to offset the allocation ~~of such Loss.~~

7.2 Regulatory Allocations. Notwithstanding Section 7.1 above but subject to Section 2.5, the following special allocations shall be made for each Fiscal Year in the following order of descending priority:

(a) Company Minimum Gain. Except as otherwise provided in Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Minimum Gain Attributable to Member Nonrecourse Debt. Except as otherwise provided in Regulations Section 1.704-2(i), if there is a net decrease in Minimum Gain Attributable to Member Nonrecourse Debt during any Fiscal Year, each Member with a share of Minimum Gain Attributable to Member Nonrecourse Debt shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in the Minimum Gain Attributable to Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the adjusted capital account deficit (as such term is used in Regulations Section 1.704-1 (b)(2)(ii)(d)) of such Member as quickly as possible, provided that an allocation pursuant to this Section 7.2(c) shall be made only after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.2(c) were not in this Agreement. This Section 7.2(c) is intended to constitute a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d)(3) of the Treasury Regulations and is to be interpreted to the extent possible

to comply with the requirements of such Regulation as it may be amended or supplemented from time to time.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated to the Members in the same ratios that Profit is allocated for the Fiscal Year in accordance with Regulations Section 1.704--2(b)(1). If the Board determines in good faith that the Nonrecourse Deductions must be allocated in a different ratio to satisfy the safe harbor requirements of the Regulations promulgated under Section 704(b) of the Code, then the Board shall revise the prescribed ratio to the numerically closest ratio that does satisfy such requirements.

(e) Member Nonrecourse Deductions. Member Nonrecourse Deductions for any Fiscal Year shall be allocated one hundred percent (100%) to the Member that bears the economic risk of loss (as defined in Regulations Section 1.704--2(b)) with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704--2(i). If more than one Member bears the economic risk of loss with respect to a Member Nonrecourse Debt, the Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such economic risk of loss.

7.3 Curative Allocations. The allocations set forth in Section 7.2 (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704--1 (b) and 1.704--2(b). Notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

7.4 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder and Regulations Section 1.704--1(b)(4)(i), income, gain, loss and deduction (as computed for federal income tax purposes) with respect to any property contributed to the capital of the Company or otherwise revalued on the books of the Company shall, solely for federal income tax purposes, be allocated among the Members to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value as determined at the time of the contribution or revaluation. Any elections or other decisions relating to such tax allocations shall be made by the Board.

7.5 Code Section 754 Election. To the extent and at the times provided by law, the Company may, by vote of the Board, elect in a timely manner pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

ARTICLE 8
MANAGEMENT

8.1 Management of the Company. Subject to the delegation of rights and powers provided for herein and the Bylaws, the Board shall have the sole right to manage the business and affairs of the Company and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of the Company.

8.18.2 Board Representation. .

(a) The Company and the Members shall take such actions as may be required to ensure that (x) the number of Managers constituting the Board shall consist of five individuals, and (y) the presence of a majority of the total number of Managers then in office (and for so long as Founding Partners owns at least a ten (10%) Ownership Percentage, including the Manager nominated under Section 8.2(a)(i) hereof), is required to constitute a quorum of the Board) is required to constitute a quorum of the Board. From and after the Effective Time, the Board shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of Managers constituting the whole Board. As of the Effective Time, the Class I Managers are Daniel S. Newman and Ian Stokoe, the Class II Managers are Keith W. Kennedy and Edmund C. Woodbury and the Class III Manager is James F. Brown.

(i) -Founding Partners shall be entitled (A) to designate one individual to the Board (the "FP Manager") until its successor is elected and qualified, (B) to designate a-- successor to the FP Manager and (C) to direct the removal from the Board of the FP Manager designated under the foregoing clauses (A) or (B); provided, however, that uponwithin 200 days following the end of the first fiscal year of the Company following the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company, then the Board shall promptly thereafter nominate two individuals to serve as Board Members a Class I Manager in accordance with the Bylaws and thereafter hold an electiona meeting of the Members (the "First Annual Meeting") to elect fivetwo Managers to fillas the Board (the "Electedsole Class I Managers") and to replace all of the then--incumbent Board membersClass I Managers (except to the extent that any of such incumbents are incumbent is re-elected in such election) in accordance with the provisions of Section 8.2(a)(iii). The Class I Managers so elected shall have a term expiring at the third annual meeting of Members following the First Annual Meeting. As of the Effective Time, the Class II Managers shall have a term expiring at the first annual meeting of Members following the First Annual Meeting and the Class III Managers shall have a term expiring at the second annual meeting of Members following the First Annual Meeting. The FP Manager initially appointed to the Board in accordance with this Section 8.2(a)(i) shall be Daniel S. Newman.

(ii) Four individuals that are affiliated with various investors in Founding Partners and/or its Affiliates shall be designated by Founding Partners to serve as members of the Board, subject to their approval by the Court, if the Court agrees to review those designations, until their successors are elected and qualified or their earlier removal by the Court, to the extent that the Court agrees to assume that power.

(iii) ~~Promptly after the date on which Founding Partners shall own less than ten percent (10%) of the outstanding Ownership Percentages of the Company~~At the First Annual Meeting and annually thereafter, the Members other than Founding Partners by Majority Vote (but excluding Founding Partners from such vote) shall be entitled (A) to elect ~~five individuals~~ successors to ~~serve as Elected~~ the class of Managers whose term expires at that meeting for a three (3)-year term and until, in each case, their respective successors are elected and qualified~~,~~ (any Manager so elected by the Members, an "Elected Manager"), (B) to elect successors to the Elected Managers and (C) to direct the removal from the Board of any Elected Managers~~. —~~, but only for cause (within the meaning given to such term under Section 141 of the Delaware General Corporation Law). If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of Managers in each class as nearly equal as possible, and any additional Manager of any class elected to fill a vacancy resulting from an increase in such class or from the death, resignation or removal from office of a Manager or other cause shall hold office for a term that shall coincide with the remaining term of that class, but in no event will a decrease in the size of the Board shorten the term of any incumbent Manager. Each Elected Manager shall hold office until the third succeeding annual meeting next after such Elected Manager's election and until such Elected Manager's successor is duly elected and qualified, or until such Elected Manager's death or until such Elected Manager resigns or is removed in the manner provided herein.

(b) Each Board designation or any proposal to remove from the Board any Manager (other than an Elected Manager) shall be made by delivering to the Company a notice signed by the party or parties entitled to such Board designation or proposal. As promptly as practicable, but in any event within ten (10) days, after delivery of such notice, the Company shall take or cause to be taken such actions as may be reasonably required to cause the appointment or removal proposed in such notice. Such actions may include calling a meeting or soliciting a written consent of the Board, or calling a meeting or soliciting a written consent of the Members (excluding Founding Partners). Any Elected Manager or the whole Board may be removed, but only for cause, at any time, by a Majority Vote (but excluding Founding Partners from such vote) at an annual meeting or at a special meeting of Members called for that purpose. The vacancy in the Board caused by any such removal shall be filled by the Board as provided in Section 8.2(c).

(c) ———Subject to the foregoing, in the event a vacancy is created on the Board by reason of the death, disability, resignation or ~~termination~~removal of any Manager, each of the Members hereby agrees that such vacancy shall be filled in accordance with the applicable procedures set forth in this Section 8.2; provided, that if the provisions of Sections 8.2(a)(i) or (ii) are not then applicable, then such vacancy shall be filled by way of a vote of a majority of the remaining members of the Board.

~~(a) Upon execution of this Agreement, the Managers designated in Section 8.2(a) will be elected and will serve until their successors are duly elected and qualified pursuant to the terms of this Agreement and the Bylaws or until their earlier death, disability, resignation, termination (with cause or without cause) or other removal.~~

(d) ———No Member, by reason of such Member's status as such, shall have any authority to act for or bind the Company but shall have only the right to vote on or approve

the actions to be voted on or approved by such Member as specified in this Agreement or the Bylaws or as required under the Act.

(e) ———The officers of the Company shall be, and shall be elected, removed and perform such functions, as are provided in the Bylaws; provided, however, that the Company shall not, and shall not permit any Subsidiary to, hire any senior executive officer without the prior approval of the Board, except for Peter R. Baronoff's employment agreement that has already been approved along with the Settlement Agreement. Subject to the terms of this Agreement, the Board may appoint, employ or otherwise contract with such other Persons for the transaction of the business of the Company or the performance of services for or on behalf of the Company as they shall determine in their sole discretion. The Board may delegate to any officer of the Company or to any such other Person such authority to act on behalf of the Company as the Board may from time to time deem appropriate in their sole discretion.

(f) ———Except as otherwise determined by the Board, when the taking of any action has been authorized by the Board, any officer of the Company or any other Person specifically authorized by the Board or the Bylaws may execute any contract or other agreement or document on behalf of the Company and may execute and file on behalf of the Company with the Secretary of State of the State of Delaware any certificates of amendment to the Company's Certificate, one or more restated Certificates and certificates of merger or consolidation and, upon the dissolution and completion of winding up of the Company, or as otherwise provided in the Act, a certificate of cancellation canceling the Company's Certificate.

(g) ———In addition to all other rights and powers provided by this Agreement, the Bylaws and the Act, the Board shall have the power to set the annual fiscal budget for the Company and to approve or disapprove the annual fiscal budget presented by any of its Subsidiaries from time to time.

(h) ———The Board shall have the right to establish any committees of the Board deemed appropriate by the Board from time to time. Subject to this Agreement, the Bylaws and the Act, each committee of the Board shall have the rights, powers and privileges granted to such committee by the Board from time to time.

(i) ———The Company shall execute and deliver a Manager Indemnification Agreement, substantially in the form of Exhibit A attached hereto, in favor of each Manager. The Company may obtain Managers' and Officers' insurance at the discretion of the Board.

8.3 Meetings; Expenses; Compensation. The Company shall reimburse each Manager who is not an employee of the Company for his or her reasonable out-of-pocket expenses (including travel, lodging and meal expenses) incurred in connection with the attendance of meetings of the Board or any committee thereof or the performance of his or her duties.

8.28.4 Member Voting Rights—.

(a) The Members shall not have any voting rights, except (i) as required by the Act or other applicable law or (ii) as otherwise expressly required by this Agreement and the Bylaws. ~~Except for cumulative voting in the election of Managers provided for in the Bylaws,~~

withWith respect to any matter as to which a vote of the Members is required, such matter shall require the affirmative vote or written consent of the Members whose Membership Interests represent a majority of the then outstanding aggregate Ownership Percentages, unless a higher or lower percentage is otherwise required.

(b) Except as otherwise required by the Act or other applicable law, this Agreement or the Bylaws, each Member shall be entitled to vote on all matters to be voted on by the Members. Each Member may elect to vote none or a portion of his, her or its Membership Interest following the delivery of a written notice to the Board setting forth such election.

8.5 Major Decisions. After the date hereof and for so long as Founding Partners continues to own a Membership Interest representing at least ten percent (10%) of the Ownership Percentages, neither the Company nor any Subsidiary shall take any of the following actions without the prior affirmative vote of the FP Manager with respect to such action; provided, however, that in the event that a majority of the other Board members oppose the vote of the FP Manager as to any such major decision, they shall be permitted to petition the Court to potentially overrule the vote of the FP Manager on such major decision:.:

(c)(a) (1) issue or authorize any Equity Securities, (2) issue any unit, stock or equity appreciation or similar rights, (3) establish or materially modify any compensation plans of the Company, (4) create a bonus plan or program or issue any bonuses or agree to issue bonuses, the payment of which is contingent upon the occurrence of a Liquidity Event, change of control or similar event, or (5) redeem, repurchase or acquire any Equity Securities, in any such case, other than pursuant to this Agreement;

(d)(b) issue or guarantee any debt for borrowed money or grant a security interest, lien or other encumbrance on any property in connection with any debt for borrowed money;

(e)(c) take any action that is reasonably expected to result in a Liquidity Event;

(f)(d) effect any acquisition by the Company of any business;

(g)(e) effect any sales or other dispositions of assets outside of the ordinary course of business;

(h)(f) commence or terminate the employment of the chief executive officer, chief financial officer or chief operating officer of the Company, or amend or revise the terms of any employment agreement with any such officer;

(i)(g) alter the size of the Board;

(j)(h) enter into, amend, terminate, enforce or grant any waivers under any contract or agreement with any officer, director, stockholder, Affiliate or employee (each a "Related Person") of the Company or any subsidiary, or with any Affiliate of a Related Person, including, without limitation, for the sale or repurchase of any of the Company's Equity Securities (other than any contract or agreement entered into with such Related Person on terms not less favorable to the Company or Subsidiary, as the case may be, than would be obtained in a

transaction with a Person which is not a Related Person, as determined by a mutually agreed upon third party). Notwithstanding the foregoing, such prior approval shall not be required with respect to any contract, agreement, action or transaction explicitly permitted by, required under, or contemplated by, the Settlement Agreement;

(k)(i) declare or pay any dividends or pay any other distribution;

(l)(j) amend this Agreement, the Bylaws or the Company's Certificate of Formation;

(m)(k) amend, terminate or otherwise exercise or waive any rights on behalf of the Company arising under, the Settlement Agreement, in each case, at any time prior to the closing of the transactions contemplated thereby; or

(n)(l) agree to take any of the foregoing actions.

———At any applicable time that the Company has any Subsidiary, it shall not permit such Subsidiary to take any of the foregoing actions (with all references to the Company deemed to be references to such Subsidiary) without the prior affirmative vote of the FP Manager with respect to such action.

8.6 Business Combinations.

(a) The Company shall not (i) merge or consolidate with or into any Person or (ii) sell, lease or exchange all or substantially all of its property and assets, unless the Board shall adopt a resolution approving such action and the affirmative vote of Members constituting a Majority Vote shall have been obtained in favor of such transaction.

(b) Any Business Combination with an Interested Member shall require the affirmative vote of Members then owning of record Membership Interests representing in the aggregate 66⅔% of the Ownership Percentages owned by all Members (excluding the Membership Interest of such Interested Member or any Affiliate or Associate of such Interested Member), in addition to any other vote that may be required under the Act or this Agreement.

(c) The Continuing Directors shall have the power and duty to determine, on the basis of information known to them at the time after reasonable inquiry, all facts necessary to determine compliance with this Section 8.6, including, without limitation, (a) whether a Person is an Interested Member, (b) the percentage Beneficially Owned by any Person, (c) whether a Person is an Affiliate or Associate of another, and (d) any applicable fair market value determination, and the good faith determination of the Continuing Directors on such matters shall be conclusive and binding for all the purposes of this Section 8.6.

ARTICLE 9
RIGHTS AND OBLIGATIONS OF MEMBERS

9.1 Limitation on Liability.. Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law.

9.2 No Liability for Company Obligations. No Member will have any personal liability for any debts or losses of the Company beyond such Member's Capital Contribution, except as provided by law, relating to liability for wrongful distributions.

9.3 Priority and Return of Capital.. Except as may be expressly provided herein, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or distributions. This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

9.4 Acknowledgement. Each Member acknowledges and agrees that except as required under the Act or applicable federal law and state securities laws, or as expressly provided in this Agreement or any other agreement between the Company and a Member, the Company will have no duty or obligation to disclose to any Member, and no Member will have any right to be advised of, any information regarding the Company or any Subsidiary. Notwithstanding anything in this Agreement, each Member acknowledges and agrees that it is expected that certain of the other Members and their respective Affiliates will on and after the date hereof, make investments in (by way of capital contributions, loans or otherwise), Persons engaged in businesses that directly or indirectly compete with business of the Company and its Subsidiaries as conducted from time to time. Each Member further acknowledges and agrees that any such investment activity shall not in any way constitute a breach of any term of this Agreement and shall not give rise to any claim, action, right to sue or other remedy against any such Member or their respective Affiliates on behalf of any Member, the Company, any Subsidiary of the Company or any of their respective Affiliates, whether under contract or applicable law.

9.5 Standard of Care; Fiduciary Duties. To the fullest extent permitted by law, no Member (or any of its Affiliates or any of their respective officers, directors, employees, agents, members, associates or other representatives) and no Manager shall as a result of this Agreement or such status owe any fiduciary duty to the Company, any Affiliate of the Company, any other Member or any Affiliate of such other Member. No Member shall as a result of this Agreement or such status have any claim against any other Member (or any of such other Member's Affiliates or any of their respective officers, directors, employees, agents, members, associates or other representatives) or any Manager based upon or arising from a claimed breach of a fiduciary duty, duty of care, duty of loyalty, corporate opportunity doctrine, conflict of interest or any similar basis, and each Member hereby waives any such claim on behalf of itself, its Affiliates and their respective successors and assigns.

ARTICLE 10
ACCOUNTING AND TAX MATTERS

10.1 Accounting Period. ~~The Company's annual accounting period shall be the calendar year.~~. The Company's annual accounting period shall be the calendar year.

10.2 Accountants.. The Company's accountants shall be such accounting firm that is chosen from time to time by the Board.

10.3 Records, Audits and Reports. At the expense of the Company, the Company shall maintain records and accounts of all operations and expenditures of the Company. In addition, the Company shall keep the following records at the principal place of business of the Company:

(a) A current list of the full name and last known address of each Member;

(b) Copies of records to enable a Member to determine the relative voting rights, if any;

(c) A copy of the Certificate of Formation of the Company and all amendments thereto;

(d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(e) Copy of this Agreement, together with any amendments thereto; and

(f) Copies of any financial statements of the Company for the three most recent years.

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

10.5 Tax Matters Partner.. The "tax matters partner" of the Company for all purposes under the Code shall be Founding Partners until such time as it no longer owns at least ten percent of the Ownership Percentages in the Company. Thereafter, the "tax matters partner" shall be such other Member as may be appointed as such by the Board from time to time.

ARTICLE 11
TRANSFERS OF MEMBERSHIP INTERESTS

11.1 Member's or Assignee's Right to Transfer. ~~Any Member may Transfer all or any part of its Membership Interest so long as, prior to or in connection with such Transfer (a) the transferee acknowledges in writing to the Company its receipt of a copy of this Agreement and its agreement to comply herewith and be bound hereby and (b~~. Subject to Section 11.2, any Member may Transfer all or any part of its Membership Interest so long as prior to such Transfer: (a) such Transfer is approved by all necessary regulatory authorities of competent jurisdiction (as determined by the Board) and transferor and transferee shall provide to the Board all information necessary or advisable to apply for, obtain and maintain such approvals (such obligation shall be continuing for transferee following any such Transfer for so long as such transferee is a Member), including a completed and executed regulatory questionnaire in form and substance as the Board may from time to time prescribe (and as may be amended by the Board from time to time); provided, however, that the costs and expenses of obtaining such approvals shall be borne by the transferor and not by the Company; (b) the transferor shall provide the Board with a completed transfer request, executed by both transferor and transferee,

in form and substance as the Board may from time to time prescribe (and as may be amended by the Board from time to time), setting forth, among other things, sufficient details regarding such Transfer so that the Company can record such Transfer on its books and records and including the transferee's written agreement to be bound by the terms and conditions of this Operating Agreement, including the continuing obligation set forth in Section 11.1(a); and (c) to the extent reasonably requested by the Board, the transferor to each such Person causes to be delivered to the Company, at its sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Company, to the effect that (i) the contemplated Transfer of such Membership Interest to such Person does not require registration under the Securities Act of 1933 or applicable State securities or Blue Sky laws, (ii) such Person has the legal right, power and capacity to own the Membership Interest, and (iii) the contemplated Transfer of such Membership Interest to such Person will not cause the Company to be treated as a corporation for ~~federal income tax purposes.~~ federal income tax purposes. The Board may delegate its power, authority and/or responsibility with respect to any of the matters set forth in this Section 11.1 to one or more officers of the Company. Any certificate representing Membership Interests may bear one or more legends to the effect that such Membership Interests are subject to the transfer restrictions set forth in this Agreement and applicable law.

11.2 Transfer Limitations. From and after the Effective Time, no Person, other than an Excepted Holder, shall exceed the Ownership Limit; provided, however, that from and after the Effective Time, no Excepted Holder shall directly or indirectly acquire any additional Beneficial Ownership in the Company. If the Board or any duly authorized committee thereof or other designees if permitted by the Act and this Agreement shall at any time determine in good faith that a Transfer has taken place that results in a violation of this Section 11.2 or that a Member intends to Transfer Beneficial Ownership in violation of this Section 11.2 (whether or not such violation is intended), the Board or a committee thereof or other designees if permitted by the Act and this Agreement shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer, including, without limitation, refusing to give effect to such Transfer on the books of the Company or instituting proceedings to enjoin such Transfer. Any Transfers or attempted Transfers in violation of this Section 11.2 shall automatically be, to the fullest extent permitted by law, void *ab initio* irrespective of any action (or non–action) by the Board or a committee thereof or other designees if permitted by the Act and this Agreement. Notwithstanding anything else to the contrary, the Board, in its sole discretion, may exempt (prospectively or retroactively) a Person from the Ownership Limit and/or the restriction contained in the proviso to the first sentence of Section 11.2 and in granting such exemption may demand, in its sole discretion, that such Person provide such representations, covenants and undertakings as the Board may deem appropriate. The Company is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Section 11.2. No delay or failure on the part of the Company or the Board in exercising any right under this Section 11.2 shall operate as a waiver of any right of the Company or the Board, as the case may be, except to the extent specifically waived in writing. In the case of an ambiguity in the application of this Section 11.2, including any definition relating to this Section 11.2, the Board shall have the power to determine the application of the provisions of this Section 11.2 with respect to any situation based on the facts known to it.

11.3 Reporting Requirements. Any Person who acquires or attempts or intends to acquire Beneficial Ownership that will or may violate Section 11.2 shall immediately give

written notice to the Company of such event, or in the case of such a proposed or attempted transaction, give at least fifteen days prior written notice, and shall provide to the Company such other information as the Company may reasonably request in order to determine the effect, if any, of such Transfer.

11.4 Certain Permitted Transfers. Notwithstanding anything to the contrary contained in this Agreement, Founding Partners may, from time to time and in its sole discretion, without the requirement of complying with any of the provisions of this Article, Transfer its Membership Interest, in whole or in part, to Fund Investors (as defined in the Settlement Agreement).

ARTICLE 12
WITHDRAWAL; DISSOLUTION AND TERMINATION

12.1 Withdrawal. No Member shall have the right to withdraw from the Company except with the consent of the Board and upon such terms and conditions as may be specifically agreed upon between the Company and the withdrawing Member. The provisions hereof with respect to distributions upon withdrawal are exclusive, and no Member shall be entitled to claim any further or different distribution upon withdrawal under Section 18-604 of the Act or otherwise. This Section 12.1 shall not apply to Transfers permitted under Article 11 hereof.

12.2 Additional Members. The Board shall have the right to cause the Company to issue additional Membership Interests and to admit additional Members upon the acquisition of such Membership Interests upon such terms and conditions, at such time or times, and for such Capital Contributions as shall be determined by the Board, subject to any limits set forth in this Agreement. In connection with the admission of an additional Member, the Board shall amend Schedule I hereto to reflect the name and address of the additional Member.

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

(a) the determination of the Board to dissolve the Company;

(b) any other event causing a dissolution of the Company under Section 18-801 of the Act (including any applicable definitions contained in Section 18-802 of the Act);

(c) upon a sale of substantially all of the assets of the Company, except that if such disposition involves the receipt by the Company of purchase money obligations or any ongoing contingent obligations of the Company, the Company shall not be dissolved until such obligations are collected on, abandoned, sold or otherwise disposed of, including to a liquidating trust; and

(d) Notwithstanding anything contained herein to the contrary, no Member's death, status as a debtor in a bankruptcy case, disability, resignation, retirement or

other termination of employment with the Company or any Affiliate thereof (for cause or without cause) shall result in the dissolution, winding up or termination of the Company.

12.4 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Act. Upon dissolution, the Board shall ceause the Company to file a statement of commencement of winding up pursuant to the Act and publish the notice permitted by the Act.

12.212.5 Winding Up, Liquidation and Distribution of Assets-.

(a) Upon dissolution of the Company, no further business shall be conducted except for the taking of such action as shall be necessary for the winding up of the affairs of the Company and the distribution of its assets to the Members pursuant to the provisions of this Section. The Board shall have full authority to wind up the affairs of the Company and to make distributions as provided herein.

(b) Upon dissolution of the Company, the Board shall either sell the assets of the Company at the best price available, or the Board may distribute to the Members all or any portion of the Company's assets in kind. If any assets are to be distributed in kind, the Board shall ascertain the fair market value (by appraisal or other reasonable means) of such assets, and each Member's Capital Account shall be charged or credited, as the case may be, as if such asset had been sold for cash at such fair market value and the net gain or net loss, recognized thereby had been allocated to and among the Members in accordance with Article 7 above.

(c) All assets of the Company shall be applied and distributed by the Board in the following order:

(i) First, to the creditors of the Company;

(ii) Second, to setting up the reserves that the Board may deem reasonably necessary for contingent or unforeseen liabilities or obligations of the Company;

(iii) Third, to the Members in an amount equal to the positive balances of their Capital Accounts in the proportion of such positive balances (after such Capital Accounts have been adjusted to reflect any Profits or Losses to be allocated to the Members in connection with the dissolution and liquidation of the Company); and

(d) Thereafter, to the Members in accordance with their respective Ownership Percentages.

(e) Except as provided by law upon a "liquidation" within the meaning of Section 1.704--1(b)(2)(ii)(g) of the Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company, or to any other Person for any purpose whatsoever.

12.6 Certificate of Termination. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a Certificate of Cancellation shall be executed and filed with the Secretary of State of Delaware in accordance with Section 18-203 of the Act.

12.7 Return of Contribution; Nonrecourse Against Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of his or her Capital Contribution. If the assets of the Company remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE 13
MISCELLANEOUS PROVISIONS

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

13.2 Complete Agreement. This Agreement amends and restates the Original Agreement in its entirety, and contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the within subject matter. ~~This Agreement shall supersede and replace in its entirety the Original Agreement.~~ There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

13.3 Application of Delaware Law. This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware, and specifically the Act.

13.4 Waiver of Right to Partition. Each of the parties hereto irrevocably waives during the term of the Company any right to maintain any action for partition with respect to the property of the Company.

13.5 Amendments. Except as otherwise provided in this Agreement, amendments, restatements and supplements to this Agreement may only be made upon the unanimous written consent of the Board and the affirmative vote of those Members constituting a Majority Vote, except that (1) without the unanimous written consent of the Board and the affirmative vote of all Members, no amendment, restatement or supplement shall amend or modify this Section 13.5, (2) without the unanimous written consent of the Board and the affirmative vote of Members then owning of record Membership Interests representing in the aggregate 75% of the Ownership Percentages owned by all Members, no amendment, restatement or supplement shall amend or modify Sections 8.2(a), 8.2(b), 8.2(c), 8.6 (provided that the Membership Interests of the Interested Member and any Affiliate or Associate thereof shall be disregarded), 11.2 or 11.3, (3) no amendment, restatement or supplement may change the requisite percentage in interest of Members which is needed to give any consent or approval under this Agreement without the ~~written consent~~affirmative vote of at least such requisite percentage, (~~3~~4) no amendment, restatement or supplement shall reduce the Capital Account of any Member without the written consent of such Member, and (~~4~~5) no amendment, restatement or supplement shall change in any material respect the method of allocating Profit or Loss or rights upon liquidation of the Company without the affirmative vote or written consent of all affected Members.

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

13.7 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

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

13.9 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

13.10 No Partnership Intended for Nontax Purposes~~.~~. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Delaware Uniform Partnership Act nor the Delaware Uniform Limited Partnership Act~~.~~, The Members do not intend to be partners one to another, or partners as to any third party for any purpose other than for federal, state, local or foreign tax purposes at such time as the Company has more than one Member. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who is incurs personal liability by reason of such wrongful representation.

13.11 Waiver. No provision of this Agreement will be deemed to have been waived except if such waiver is contained in a written instrument executed by the party against which such waiver is to be enforced, and no such waiver will be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given. The rights and remedies of the parties under this Agreement are in addition to all other rights and remedies, at law or in equity, that they may have against the other parties hereto.

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

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

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

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

MEMBER:

Founding Partners Stable-Value Fund, L.P.,
a Delaware limited partnership

By: Founding Partners Capital Management Company, a Florida corporation, Its
Corporation, its
General Partner

By: ______________________
Daniel S. Newman, Its Court-appointed Receiver

Founding Partners Designee, LLC,
a Delaware limited liability company

By: ______________________
Daniel S. Newman, Manager

Error! Unknown document property name.

Schedule of Members

Founding Partners Stable-Value Fund, L.P.

One Biscayne Tower
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131

Attn: Daniel S. Newman, Receiver

Facsimile: (305) 995-6387

with a copy to:

Broad and Cassel
7777 Glades Road
Suite 300
Boca Raton, FL 33434
Attention: Nina S. Gordon, P.A.
Facsimile: (561) 218-8856

ANNEX A

AMENDED AND RESTATED

BYLAWS

OF

FOUNDING PARTNERS DESIGNEE, LLC

INTRODUCTION

A. Operating Agreement. These Bylaws are subject to the Second Amended and Restated Limited Liability Company Agreement dated as of ~~May 24, 2012~~July [ ], 2014 (as amended, supplemented, modified or otherwise restated from time to time, the "Operating Agreement"), of Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") among the Company and the Members party thereto. In the event of any inconsistency between the terms hereof and the terms of the Operating Agreement, the terms of the Operating Agreement shall control.

B. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Operating Agreement.

ARTICLE I
MEETINGS OF MEMBERS

Section 1. Place of Meetings and Meetings by Telephone.

Meetings of Members shall be held at any place designated by the Board. In the absence of any such designation, meetings of Members shall be held at the principal place of business of the Company. Any meeting of the Members may be held by conference telephone or similar communication equipment so long as all Members participating in the meeting can hear one another, and all Members participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 2. Call of Meetings.

~~Meetings~~Annual or special meetings of the Members may be called at any time by ~~any Manager~~the Board (and only by the Board) for the purpose of taking action upon any matter requiring the vote or authority of the Members as provided herein or in the Operating Agreement or upon any other matter as to which such vote or authority is deemed by the Board to be necessary or desirable.

Section 3. Notice of Meetings of Members.

All notices of meetings of Members shall be sent or otherwise given in accordance with Section 4 of this Article I not less than five (5) nor more than ~~thirty (30~~ninety (90) days before the date of the meeting~~.~~ (provided, that notice of the First Annual Meeting shall be given at least

sixty (60) days before the date of the First Annual Meeting). The notice shall specify the place, date and hour of the meeting and the general nature of the business to be transacted. Only matters set forth in such notice may be brought before a meeting of the Members.

The Board may consider any matter to be conducted at a meeting of the Members (other than nominations for Managers, which shall be subject to Article II, Section 12 of these Bylaws) that is proposed by a Member so long as such Member (x) was a Member as of the record date set for such meeting, (y) is entitled to vote at such meeting and (z) has given timely notice thereof in writing to the Board. To be timely, a Member's notice shall be delivered to the Board at the principal executive offices of the Company not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary of the date on which the Company's immediately preceding annual meeting of Members took place; provided, however, that, in the case of the Company's First Annual Meeting, notice by the Member in order to be timely must be so received not later than the close of business on the thirtieth (30th) day following the day on which disclosure of the date of the First Annual Meeting is first made to the Members; provided, further, that if any future annual meeting is to be held on a date that is more than thirty (30) days before or after the anniversary of the previous year's annual meeting, notice by the Member in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which disclosure of the date of the annual meeting is first made to the Members. In no event shall the announcement or postponement of an annual meeting commence a new time period for the giving of a Member's notice as described herein. Such Member's notice shall set forth: (A) a brief description of each matter the Member proposes to bring before the meeting and the reasons for conducting such business at the meeting; (B) a description of all agreements, arrangements or understandings between such Member and any other Person relating to such business; (C) a description of any material interest of such Member in such business; and (D) the name and address of the Member giving such notice as they appear on the Company's books, such Member's Ownership Percentage and a description of any other Beneficial Ownership such Member may have in Equity Securities or otherwise in the Company.

Section 4. Manner of Giving Notice.

Notice of any meeting of Members shall be given personally or by telephone to each Member or sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by a nationally recognized overnight courier, charges prepaid, addressed to the Member at the address of that Member appearing on the books of the Company or the address given by the Member to the Company for the express purpose of receiving notices. Notice shall be deemed to have been given at the time when delivered, with respect to notices given personally or by telephone, or at the time sent or deposited in the mail, with respect to notices given by first class mail, overnight courier, telegram, telecopy or email (or similar electronic means).

Section 5. Adjourned Meeting; Notice.

Any meeting of Members, whether or not a quorum is present, may be adjourned from time to time by the vote of the holders of Membership Interests representing a majority of the Ownership Percentages represented at that meeting, either in person or by proxy. When any meeting of Members is adjourned to another time or place, notice need not be given of the adjourned meeting, unless a new record date of the adjourned meeting is fixed or unless the

adjournment is for more than thirty (30) days from the date set for the original meeting, in which case the Board shall set a new record date and shall give notice in accordance with the provisions of Sections 3 and 4 of this Article I. At any adjourned meeting, the Company may transact any business that might have been transacted at the original meeting.

Section 6. Quorum; Voting.

At any meeting of the Members, the holders of Membership Interests representing a majority of the Ownership Percentages, in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of Members holding a higher aggregate Ownership Percentage is required by the Operating Agreement, these Bylaws or applicable law. Except as otherwise required by the Operating Agreement, these Bylaws or applicable law ~~(including in elections of Managers),~~, all matters subject to a vote (other than the elections of Managers) shall be determined by the Members whose Membership Interests represent a majority of the then outstanding Ownership Percentages. Except as otherwise ~~expressly provided in~~ required by the Operating Agreement, these Bylaws or applicable law, the elections of Managers shall be ~~elected~~determined by ~~way~~a plurality of ~~cumulative voting~~the votes cast by the Members.

Section 7. Waiver of Notice by Consent of Absent Members.

The transaction of a meeting of Members, however called and noticed and wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present either in person or by proxy and, if either before or after the meeting, each person entitled to vote who was not present in person or by proxy signs a written waiver of notice or a consent to a holding of the meeting or an approval of the minutes. The waiver of notice or consent shall specify either the business to be transacted or the purpose of any meeting of Members. Attendance by a person at a meeting shall also constitute a waiver of notice of that meeting, except when the person objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if that objection is expressly made at the beginning of the meeting.

Section 8. Member Action by Written Consent Without a Meeting.

~~Any~~Notwithstanding anything else in this Agreement or the Operating Agreement to the contrary, any action that may be taken at any meeting of Members may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the holders of all Membership Interests ~~representing a majority of the Ownership Percentages; provided, that written notice of any actions proposed to be taken by written consent and a brief description of such actions shall be provided to each Member no less than five (5) days and no more than thirty (30) days prior to the date on which such actions are proposed to become effective,~~. Any such written consent may be executed and given by telecopy, email or similar electronic means. Such consents shall be filed with the Secretary of the Company and shall be maintained in the Company's records.

Section 9. **Record Date for Member Notice, Voting and Giving Consents.**

(a) For purposes of determining the Members entitled to vote or act at any meeting or adjournment thereof, the Board may fix in advance a record date which shall not be greater than sixty (60) days nor fewer than one (1) day before the date of any such meeting. If the Board does not so fix a record date, the record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day immediately preceding the day on which notice is given, or if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(b) The record date for determining the Members entitled to give consent to action in writing without a meeting (i) when no prior action of the Board has been taken, shall be the day on which the first written consent is given or (ii) when prior action of the Board has been taken, shall be such date as determined for that purpose by the Board, which record date shall not precede the date upon which the resolution fixing it is adopted by the Board and shall not be more than thirty (30) days after the date of such resolution.

(c) Only Members of record on the record date as herein determined shall have any right to vote or act at any meeting or have any right to give consent to any action relating to such record date; provided, that no Member who transfers all or part of such Member's interest after a record date (and no transferee of such interest) shall have the right to vote or act with respect to the transferred interest as regards the matter for which the record date was set.

Section 10. **Proxies.**

Each Member entitled to vote or act on any matter at a meeting of Members shall have the right to do so either in person or by proxy; provided, that an instrument authorizing such a proxy to act is executed by the Member in writing. A valid proxy that does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it before the vote pursuant to that proxy by a writing delivered to the Company stating that the proxy is revoked, by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing that proxy or (ii) written notice of the death or incapacity of the maker of that proxy is received by the Company before the vote pursuant to that proxy is counted. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger. Except to the extent inconsistent with the provisions hereof, the Act, and judicial construction thereof by the courts of the State of Delaware, shall be applicable to proxies granted by any Member.

ARTICLE II
MANAGERS AND MEETINGS OF MANAGERS

Section 1. **Powers.**

The powers of the Managers shall be as provided in the Operating Agreement.

Section 2. Number of Managers.

The Board shall consist of the number of persons as shall be designated subject to and in accordance with the terms of the Operating Agreement.

Section 3. Vacancies.

Vacancies in the authorized number shall be filled in accordance with the terms of the Operating Agreement.

Section 4. Place of Meetings and Meetings by Telephone.

All meetings of the Board may be held at any place that has been designated from time to time by resolution of the Board or in any notice properly given with respect to such meeting. In the absence of such a designation, regular meetings shall be held at the principal place of business of the Company. Any meeting, regular or special, may be held by conference telephone or similar communication equipment; provided, that all Managers participating in the meeting can hear one another, and all Managers participating by telephone or similar communication equipment shall be deemed to be present in person at the meeting.

Section 5. Regular Meetings.

Regular meetings of the Board shall be held on such dates, at such times and at such places as shall be fixed by approval of the Managers in accordance with the terms of the Operating Agreement. Such regular meetings may not be held without notice.

Section 6. Special Meetings.

Special meetings of the Board for any purpose or purposes may be called at any time by any of the Managers~~ or by the holders of Membership Interests representing a majority of the Ownership Percentages.~~. Notice of the time and place of a special meeting shall be delivered personally or by telephone to each Manager and sent by first class mail, by telegram, telecopy or email (or similar electronic means) or by nationally recognized overnight courier, charges prepaid, addressed to each Manager at that Manager's address as it is shown on the records of the Company. If the notice is mailed, it shall be deposited in the United States mail at least five (5) business days before the date of the meeting. If the notice is delivered personally or by telephone or by telegram, telecopy or email (or similar electronic means) or overnight courier, it shall be given at least twenty-four (24) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the Manager or to a person designated by such Manager to receive such notice. Any notice of a special meeting shall state generally the nature of the business to be transacted as such meeting.

Section 7. Quorum.

In order to obtain a quorum for the transaction of business, a majority of the total number of Managers then in office must be present, including the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement, to the extent such Section is then applicable. Every act done or decision made by the affirmative vote of the Managers holding a

majority of the votes present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board except as otherwise required by the Operating Agreement, these Bylaws or applicable law.

Section 8. Waiver of Notice.

Notice of any meeting need not be given to any Manager who either before or after the meeting signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent shall specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the records of the Company or be made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Manager who attends the meeting without protesting at or prior to its commencement the lack of notice to that Manager.

Section 9. Adjournment.

Managers present at any meeting entitled to cast a majority of all votes entitled to be cast by such Managers, whether or not constituting a quorum, may adjourn any meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given unless the meeting is adjourned for more than thirty (30) days, in which case notice of the time and place shall be given before the time of the adjourned meeting in the manner specified in Section 6 of this Article II.

Section 10. Action Without a Meeting.

Any action to be taken by the Board at a meeting may be taken without such meeting by the written consent of all of the Managers. Any such written consent may be executed and given by telecopy, email or similar electronic means. Such written consents shall be filed with the minutes of the proceedings of the Board.

Section 11. Voting of Managers.

Each Manager shall be entitled to one vote on all matters upon which the Managers are entitled to vote.

Section 12. Nominating Committee.

The Board shall appoint a nominating committee consisting of three Board members, which committee will be responsible for preparing a slate of Managers for any upcoming elections of the Board. For so long as the FP Manager serves on the Board, it shall also serve on the nominating committee. The nominating committee shall maintain permanent records of its proceedings and actions and shall report to the full Board. Only persons nominated by a Member subject to the requirements of the following paragraph or by the Nominating Committee shall be eligible for election as Managers at any meeting of the Members following the effective date of these Bylaws.

A Member may nominate any person to serve as a member of the Board so long as such Member (x) was a Member on the record date for such meeting, (y) is entitled to vote at such

meeting and (z) has given timely notice thereof in writing to the Nominating Committee. To be timely, a Member's notice shall be delivered to the Nominating Committee at the principal executive offices of the Company not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary of the date on which the Company's immediately preceding annual meeting of Members took place; provided, however, that, in the case of the Company's First Annual Meeting, notice by the Member in order to be timely must be so received not later than the close of business on the thirtieth (30th) day following the day on which disclosure of the date of the First Annual Meeting is first made to the Members; provided, further, that if any future annual meeting is to be held on a date that is more than thirty (30) days before or after the anniversary of the previous year's annual meeting, notice by the Member in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which disclosure of the date of the annual meeting is first made to the Members. In no event shall the announcement or postponement of an annual meeting commence a new time period for the giving of a Member's notice as described herein. Such Member's notice shall set forth: (A) as to each Person whom the Member proposes to nominate, all information relating to such Person that would be required to be disclosed in solicitations of proxies for election of directors pursuant to Regulation 14A under the Exchange Act, including rules with respect to contested elections thereunder and including such Person's written consent to being nominated and to serve as a Manager if elected; (B) a description of all agreements, arrangements or understandings between such Member and each proposed nominee and any other Person (including their names) pursuant to which the nomination(s) are to be made by such Member; and (C) as to the Member giving the notice, the name and address of such Member as they appear on the Company's books, the Ownership Percentage of such Member and a description of any other Beneficial Ownership such Member may have in Equity Securities or otherwise in the Company. The Nominating Committee may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a member of the Board, including with respect to qualifications previously established and disclosed to the Members by any committee of the Board.

ARTICLE III
OFFICERS

Section 1. Officers.

The officers of the Company shall be the Chief Executive Officer (the "CEO"), President, Vice President (if appointed), Secretary, Assistant Secretary (if appointed), Treasurer, Assistant Treasurer (if appointed) and Controller (if appointed). The Company may also have, at the discretion of the Board, such other officers as may be appointed in accordance with the provisions of Section 3 of this Article III. Any number of offices may be held by the same person. Officers may, but need not, be Managers.

Section 2. Election of Officers.

The officers of the Company shall be chosen by the Board subject to the requirements in the Operating Agreement and these Bylaws and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any employment contract with the Company.

Section 3. **Additional Officers.**

The Board may appoint such additional officers as the business of the Company may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. **Removal and Resignation of Officers.**

Subject to, and only in accordance with, the terms of the Operating Agreement, and the rights, if any, of an officer under any employment contract with the Company, any officer may be removed, with or without cause, by the Board at any regular or special meeting of the Board or by such officer, if any, upon whom such power of removal may be conferred by the Board. Any officer may resign at any time by giving written notice to the Company. Unless otherwise provided in any written agreement with any such officer, any resignation by an officer shall take effect at the date of the receipt of that notice or at any later time specified in that notice, and unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

Section 5. **Vacancies in Offices.**

Subject to, and only in accordance with, the terms of the Operating Agreement, vacancy in any office because of death, disability, resignation, removal, disqualification or other cause shall be filled by the Board.

Section 6. **CEO and President.**

Each of the CEO and President shall, subject to the control of the Board, be responsible for the general supervision, direction and control of the business and the officers of the Company. He or she shall have such other powers and duties as may be prescribed by the Board, the Operating Agreement, or these Bylaws.

Section 7. **Secretary.**

The Secretary shall keep or cause to be kept at the principal place of business of the Company, or such other place as the Board may direct, a book of minutes of all meetings and actions of the Board, committees or other delegates of the Board and the Members. The Secretary shall keep or cause to be kept at the principal place of business of the Company a register or a duplicate register showing the names of all Members and their addresses, Ownership Percentage in the Company held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give or cause to be given notice of all meetings of the Members and of the Board (or committees or other delegates thereof) required to be given by these Bylaws, the Operating Agreement, or by applicable law and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

Section 8. Treasurer or Controller.

The Treasurer or Controller shall be the chief financial officer of the Company and shall keep and maintain or cause to be kept and maintained adequate and correct books and records of accounts of the properties and business transactions of the Company. The books of account shall at all reasonable times be open to inspection by any Manager. The Treasurer or Controller shall deposit all monies and other valuables in the name and to the credit of the Company with such depositaries as may be designated by the Board. He or she shall disburse the funds of the Company as may be ordered by the Board, shall render to the Board, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the Company and shall have other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV
MAINTENANCE AND INSPECTION OF RECORDS

Section 1. Member List.

The Company shall maintain at its principal place of business a record of its Members, giving the names and addresses of all Members and the Ownership Percentage in the Company held by each Member. Subject to such reasonable standards (including standards governing what information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and by the terms of the Operating Agreement, each Member has the right to obtain from the Company, from time to time upon reasonable demand for any purpose reasonably related to the Member's interest as a Member of the Company, a record of the Company's Members.

Section 2. Bylaws.

The Company shall keep at its principal place of business the original or a copy of these Bylaws, as amended or otherwise modified or restated from time to time, which shall be open to inspection by the Members at all reasonable times during usual business hours.

Section 3. Other Records.

The accounting books and records, minutes of proceedings of the Members and the Board and any committees or delegates of the Board and all other information pertaining to the Company that is required to be made available to the Members under the Act shall be kept at such place or places designated by the Board or, in the absence of such designation, at the principal place of business of the Company. The minutes and the accounting books and records and other information relating to the Company shall be kept in written form. The books and records of the Company shall be maintained in accordance with United States generally accepted , accounting principles consistently applied during the term of the Company, wherein an" transactions and other matters relating to the business, operations and properties of the Company shall be currently entered. Subject to such reasonable standards (including standards governing what information and documents are to be furnished and at whose expense) as may be established by the Board from time to time and to the terms of the Operating Agreement, minutes, accounting books and records and all other records and information relating to the

Company shall be open to inspection upon the written demand of any Member at any reasonable time during usual business hours for purposes reasonably related to the Member's interests as a Member. Any such inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts. Notwithstanding the foregoing, the Board shall have the right to keep confidential from Members (other than from any Member who is a Manager) for such period of time as the Board deems reasonable any information which the Board reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Board in good faith believes is not in the best interests of the Company or could damage the Company or its business or which the Company is required by applicable law or by agreement with a third party to keep confidential.

Section 4. Periodic Reports.

The Company will use reasonable efforts to make the following information available to its Members, provided that each Member who seeks access to such information shall have agreed to the Company's confidentiality policy with respect to such information prior to receiving any:

(a) *Quarterly Reports*: Within 15 days of completion of the Company's financial statements for any fiscal quarter, excluding the quarter which is the fiscal year-end, make available to the Members on the Company's website or by other appropriate means unaudited quarterly financial information for the Company for such quarter; and

(b) *Year-end Reports*: Within 30 days of receipt of the completed audit for such fiscal year from the certified public accounting firm that shall have performed the audit, make available to the Members on the Company's website or by other appropriate means audited financial information for the Company for such fiscal year.

ARTICLE V
GENERAL MATTERS

Section 1. Checks, Drafts, Evidence of Indebtedness.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable by the Company shall be signed or endorsed in such manner and by such person or persons as shall be designated from time to time in accordance with the resolution of the Board.

Section 2. Representation of Shares of Other Entities Held by Company.

Any officer of the Company authorized by the Board is authorized to vote or represent on behalf of the Company any and all shares of any corporation, partnership, limited liability company, trust or other entity, foreign or domestic, standing in the name of the Company. Such authority may be exercised in person or by a proxy duly executed by such person.

Section 3. Seal.

The Board may approve and adopt an official seal of the Company, which may be altered by them at any time. Unless otherwise required by the Board, any seal so adopted shall not be

necessary to be placed on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the Company.

ARTICLE VI
AMENDMENTS AND INCORPORATION BY REFERENCE

Section 1. Amendment.

Subject to the terms of the Operating Agreement, these Bylaws may be restated, amended, supplemented or repealed or otherwise modified only by the affirmative vote of a majority of the ~~Board~~Managers then in office, which majority affirmative vote shall include the FP Manager designated to the Board pursuant to Section 8.2(a)(i) of the Operating Agreement to the extent such Section is then applicable; provided, however, that Section 4 of Article IV may only be restated, amended, supplemented or repealed or otherwise modified only by the affirmative vote of all of the Managers.

Section 2. Incorporation by Reference of Bylaws into Operating Agreement.

These Bylaws and any amendments hereto shall be deemed incorporated by reference in the Operating Agreement.

Section 3. Conflicts.

In the event that any provision of these Bylaws conflicts with any provision of the Operating Agreement, the terms of the Operating Agreement, as applicable, shall control.

ARTICLE VII
INDEMNIFICATION

(a) Each Person who was or is made a party to, or is threatened to be made a party to or is otherwise involved in, any action, suit, investigation or proceeding, whether civil, criminal, administrative or investigative (hereinafter, a "proceeding") by reason of the fact that he, she or it is or was a Manager or an officer of the Company, or is or was serving at the request of the Company as a Manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise Affiliated with the Company (hereinafter an "indemnitee"), whether the basis of such a proceeding is alleged action in an official capacity as a Manager, officer, employee or agent or in any other capacity while serving as a Manager, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the Act (including indemnification for negligence but excluding indemnification (i) for acts or omissions involving actual fraud, willful misconduct, gross negligence, willful violation of applicable law, material breaches of the Bylaws, the Operating Agreement, or (ii) with respect to any transaction from which the indemnitee derived an improper personal benefit, as determined by the Board in their reasonable discretion), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith.

(b) The right to indemnification set forth in paragraph (a) of this Article VII shall include the right to have the Company pay the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). The rights to indemnification and to the advancement of expenses set forth in paragraph (a) of this Article VII and this paragraph (b) shall be contract rights, and such rights shall continue as to an indemnitee who has ceased to be a Manager, officer, employee or agent of the Company and shall inure to the benefit of the indemnitee's assigns, transferees, heirs, executors and administrators.

(c) The rights to indemnification and to the advancement of expenses granted to an indemnitee in this Article VII shall not be exclusive of any other right that any indemnitee may have or hereafter acquire under any statute, agreement, vote of the Board or otherwise. The rights to indemnification and advancement of expenses conferred upon such indemnitee herein shall be contract rights, shall vest when such person becomes a director or officer of the Company and shall continue as vested contract rights, covering acts or omissions allegedly committed while the indemnitee was a director or officer of the Company, even if such person ceases to be a director or officer of the Company.

(d) The Company may maintain insurance, at its expense, to protect itself and any Manager, officer, employee, consultant or agent of the Company or another limited liability company, corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the Act.

(e) The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to advancement of expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of Managers and officers of the Company.

(f) Any amendment or appeal of the provisions of this Article VII shall not adversely affect any right or protection hereunder of any indemnitee in respect of any act or omission occurring prior to the time of such amendment or repeal (regardless of whether the proceeding relating to such act or omission, or any proceeding relating to such person's rights to indemnification or to advancement of expenses, is commenced before or after the time of such amendment, repeal, modification, or adoption), and any such amendment, repeal, modification, or adoption that would adversely affect such person's rights to indemnification or advancement of expenses hereunder shall be ineffective as to such person, except with respect to any proceeding that relates to or arises from (and only to the extent such proceeding relates to or arises from) any act or omission of such person occurring after the effective time of such amendment, repeal, modification or adoption.

EXHIBIT A

MANAGER INDEMNIFICATION AGREEMENT

THIS MANAGER INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this [____] day of [_______], [_______], by and between Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") and [_____________] (the "Indemnitee").

WHEREAS, it is essential to the Company that it be able to retain and attract as managers the most capable persons available;

WHEREAS, increased corporate litigation has subjected managers to litigation risks and expenses, and the limitations on the availability of manager liability insurance have made it increasingly difficult for the Company to attract and retain such persons;

WHEREAS, the Company's governing documents permit it to indemnify its managers to the fullest extent permitted by law and permit it to make other indemnification arrangements and agreements;

WHEREAS, the Company desires to provide the Indemnitee with specific contractual assurance of the Indemnitee's rights to full indemnification against litigation risks and expenses (regardless of any amendment to or revocation of the Company's Limited Liability Company Agreement (the "Operating Agreement") or any change in the ownership of the Company or the composition of its board of managers (the "Board")); and

WHEREAS, the Company acknowledges and agrees that providing the Indemnitee with the rights provided for herein is a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and the Indemnitee do hereby covenant and agree as follows:

1. Definitions.

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a manager of the Company, (ii) in any capacity with respect to any employee benefit plan of the Company or (iii) as a manager (or comparable position) of any other Entity at the request of the Company. For purposes of subsection (iii) of this Section 1(a), a manager of the Company who is serving or has served as a manager or director of a Subsidiary shall be deemed to be serving as the request of the Company.

(b) "Entity" shall mean any corporation, partnership, limited liability company, joint venture, company, foundation, association, organization or other legal entity.

(c) "Expenses" shall mean all fees, costs and expenses incurred in connection with any Proceeding, including, without limitation, attorneys' fees, disbursements and retainers (including, without limitation, any fees, disbursements and retainers incurred by

~~the Indemnitee pursuant to Section 10 of this Agreement), fees and disbursements of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), court costs, transcript costs, fees of experts, travel expenses, duplicating, printing and binding costs, telephone and fax transmission charges, postage, delivery services, secretarial services and other disbursements and expenses.~~

~~(d) "Indemnifiable Expenses," "Indemnifiable Liabilities" and "Indemnifiable Amounts" shall have the meanings ascribed to those terms in Section 3(a) below.~~

~~(e) "Liabilities" shall mean judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement.~~

~~(f) "Proceeding" shall mean any threatened or pending claim, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, arbitrative or investigative, whether formal or informal, including a proceeding initiated by the Indemnitee pursuant to Section 10 of this Agreement to enforce the Indemnitee's rights hereunder.~~

~~(g) "Subsidiary" shall mean any Entity of which the Company owns (either directly or indirectly) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such Entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such Entity.~~

~~**2. Services of Indemnitee**. In consideration of the Company's covenants and commitments hereunder, the Indemnitee agrees to serve or continue to serve as a manager on the Board. However, this Agreement shall not impose any obligation on the Indemnitee or the Company to continue the Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.~~

~~**3. Agreement to Indemnify**. The Company hereby agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:~~

~~(a) Subject to the exceptions contained in Section 4(a) and Section 6 below, if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding (other than an action by or in the right of the Company) by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Expenses and Liabilities incurred or paid by the Indemnitee or on the Indemnitee's behalf in connection with such Proceeding (referred to herein as "Indemnifiable Expenses" and "Indemnifiable Liabilities," respectively, and collectively as "Indemnifiable Amounts").~~

~~(b) Subject to the exceptions contained in Section 4(b) and Section 6 below, if the Indemnitee was or is, or is threatened to be made, a party to or participant in any~~

Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses.

(c) In addition to, and without regard to any limitations on, the indemnification provided for in Section 3(a) and (b), the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Amounts if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of the Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to the Indemnitee that is finally determined to be unlawful under Delaware law.

4. Exceptions to Indemnification. The Indemnitee shall be entitled to indemnification under Section 3(a) and Section 3(b) above in all circumstances other than the following:

(a) If indemnification is requested under Section 3(a) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (i) in good faith and (ii) in a manner the Indemnitee reasonably believed to be in the best interests of the Company, or, with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Amounts hereunder.

(b) If indemnification is requested under Section 3(b) and

(i) it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (A) in good faith and (B) in a manner the Indemnitee believed to be in the best interests of the Company, then the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder.

(ii) it has been adjudicated finally by a court of competent jurisdiction that the Indemnitee is liable to the Company with respect to any claim, issue or matter involved in the Proceeding out of which the claim for indemnification has arisen, then no Indemnifiable Expenses shall be paid with respect to such claim, issue or matter unless the court of competent jurisdiction in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Indemnifiable Expenses which such court shall deem proper.

~~5. **Procedure for Payment of Indemnifiable Amounts**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Amounts for which the Indemnitee seeks payment under Section 3 of this Agreement and a short description of the basis for the claim. The Company shall pay such Indemnifiable Amounts to the Indemnitee within ten (10) calendar days of receipt of the request. At the request of the Company, the Indemnitee shall furnish such documentation and information as are reasonably available to the Indemnitee and necessary to establish that the Indemnitee is entitled to indemnification hereunder.~~

~~6. **Indemnification for Expenses if Indemnitee is Wholly or Partly Successful**. Notwithstanding anything contained in this Agreement to the contrary, to the extent that the Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Indemnitee shall be indemnified against all Indemnifiable Amounts in connection therewith. If the Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify the Indemnitee against all Indemnifiable Amounts in connection with each successfully resolved claim, issue or matter. For purposes of this Agreement, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter. Notwithstanding any of the foregoing, nothing herein shall be construed to limit an Indemnitee's right to indemnification which he or she would otherwise be entitled to pursuant to Section 3 hereof, regardless of the Indemnitee's success in a Proceeding.~~

~~7. **Effect of Certain Resolutions**. Neither the settlement or termination of any Proceeding nor the failure of the Company to award indemnification or to determine that indemnification is payable shall create an adverse presumption that the Indemnitee is not entitled to indemnification hereunder. In addition, the termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in the best interests of the Company or, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's action was unlawful.~~

~~8. **Agreement to Advance Expenses; Conditions**. The Company shall pay to the Indemnitee all Indemnifiable Expenses incurred by the Indemnitee in connection with any Proceeding, including a Proceeding by or in the right of the Company, in advance of the final disposition of such Proceeding. The Indemnitee hereby undertakes to repay the amount of Indemnifiable Expenses paid to the Indemnitee if it is finally determined by a court of competent jurisdiction that the Indemnitee is not entitled under this Agreement to, or is prohibited by applicable law from, indemnification with respect to such Indemnifiable Expenses. For avoidance of doubt, any advances and undertakings to repay shall be unsecured and interest free.~~

~~9. **Procedure for Advance Payment of Expenses**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Expenses for which the Indemnitee seeks advancement under Section 8 of this Agreement, together with documentation evidencing that the Indemnitee has incurred such Indemnifiable Expenses. Payment of Indemnifiable Expenses under Section 8 shall be made no later than ten (10) calendar days after the Company's receipt of such request.~~

10. Remedies of Indemnitees.

(a) Right to Petition Court. In the event that the Indemnitee makes a request for payment of Indemnifiable Amounts under Section 3 and Section 5 herein or a request for an advancement of Indemnifiable Expenses under Section 8 and Section 9 herein and the Company fails to make such payment or advancement in a timely manner pursuant to the terms of this Agreement, the Indemnitee may petition a court to enforce the Company's obligations under this Agreement.

(b) Expenses. The Company agrees to reimburse the Indemnitee in full for any Expenses incurred by the Indemnitee in connection with investigating, preparing for, litigating, defending or settling any action brought by the Indemnitee under Section 10(a) above; provided, however, that if the Indemnitee is unsuccessful, on the merits in such action, then the Company shall have no obligation to the Indemnitee under this Section 10(b).

(c) Validity of Agreement. The Company shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 10(a) above, that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Company is bound by all the provisions of this Agreement.

(d) Failure to Act Not a Defense. The failure of the Company (including the Board or any committee thereof, independent legal counsel, or members) to make a determination concerning the permissibility of the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses under this Agreement shall not be a defense in any action brought under Section 10(a) above, and shall not create a presumption that such payment or advancement is not permissible.

11. Notice by Indemnitee. The Indemnitee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, or other document relating to any Proceeding which may result in the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify the Indemnitee from the right to receive payments of Indemnifiable Amounts or advancements of Indemnifiable Expenses.

12. Representations and Warranties of the Company. The Company hereby represents and warrants to the Indemnitee as follows:

(a) Authority. The Company has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Company.

(b) Enforceability. This Agreement, when executed and delivered by the Company in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by equitable principles, applicable

~~bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.~~

13. ~~**Contract Rights Not Exclusive; Survival of Rights; Insurance.**~~

~~(a) The rights to payment of Indemnifiable Amounts and advancement of Indemnifiable Expenses provided by this Agreement shall be in addition to, but not exclusive of, any other rights which the Indemnitee may have at any time under applicable law, the Operating Agreement, or any other agreement, vote of members or managers (or a committee of managers), or otherwise, both as to action in the Indemnitee's official capacity and as to action in any other capacity as a result of the Indemnitee's serving as a manager of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.~~

~~(b) The Indemnitee shall be covered by any managers and officers liability insurance and any other insurance policy or policies providing liability insurance for managers, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, and the Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such manager, officer, employee, agent or fiduciary under such policy or policies. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.~~

14. ~~**Successors.** This Agreement shall be (a) binding upon all successors and assigns of the Company (including any transferee of all or a substantial portion of the business, equity and/or assets of the Company and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the heirs, personal representatives, executors and administrators of the Indemnitee. This Agreement shall continue for the benefit of the Indemnitee and such heirs, personal representatives, executors and administrators after the Indemnitee has ceased to have Corporate Status.~~

15. ~~**Change in Law.** To the extent that a change in Delaware law (whether by statute or judicial decision) shall permit broader indemnification or advancement of expenses than is provided under the terms of the Operating Agreement and this Agreement, the Indemnitee shall~~

~~be entitled to such broader indemnification and advancements, and this Agreement shall be deemed to be amended to such extent.~~

16. ~~**Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any clause thereof, shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, in whole or in part, such provision or clause shall be limited or modified in its application to the minimum extent necessary to make such provision or clause valid, legal and enforceable, and the remaining provisions and clauses of this Agreement shall remain fully enforceable and binding on the parties.~~

17. ~~**Modifications and Waiver.** Except as provided in Section 15 above with respect to changes in Delaware law which broaden the right of the Indemnitee to be indemnified by the Company, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement (whether or not similar), nor shall such waiver constitute a continuing waiver,~~

18. ~~**General Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) when transmitted by facsimile and receipt is acknowledged, or (c) if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed~~

~~(i) If to the Indemnitee, to:~~

____
____
____
____
~~Fax:~~ ________________________
~~Tel:~~ ________________________

~~(ii) If to the Company, to: Founding Partners Designee, LLC~~

____
____
____
____
~~Fax:~~ ________________________
~~Tel:~~ ________________________

~~or to such other address as may have been furnished in the same manner by any party to the others.~~

19. ~~**Governing Law.** This Agreement shall be governed by and construed and enforced under the laws of Delaware without giving effect to the provisions thereof relating to conflicts of law.~~

~~**20. Consent to Jurisdiction**. Each of the Company and the Indemnitee hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware and any United States District Court of competent jurisdiction located in the State of Delaware (the "Courts"), for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any litigation relating thereto except in such Courts. Each of the Company and the Indemnitee hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement in the Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such Proceeding brought in any such Court has been brought in an inconvenient forum.~~

~~21. This Agreement supercedes any and all prior agreements between the Company and the Indemnitee regarding the terms and conditions of the Indemnitee's indemnification by the Company.~~

~~[SIGNATURES ON FOLLOWING PAGE(S).]~~

EXHIBIT A

~~**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.~~

~~**COMPANY:**~~

~~**FOUNDING PARTNERS DESIGNEE, LLC**~~

~~By:~~ ______________________________
~~Name:~~
~~Title:~~

~~**INDEMNITEE:**~~

~~By:~~ ______________________________
~~Name:~~
~~Title:~~

MANAGER INDEMNIFICATION AGREEMENT

THIS MANAGER INDEMNIFICATION AGREEMENT (this "Agreement") is made as of this [___] day of [_____], [____], by and between Founding Partners Designee, LLC, a Delaware limited liability company (the "Company") and [__________] (the "Indemnitee").

WHEREAS, it is essential to the Company that it be able to retain and attract as managers the most capable persons available;

WHEREAS, increased corporate litigation has subjected managers to litigation risks and expenses, and the limitations on the availability of manager liability insurance have made it increasingly difficult for the Company to attract and retain such persons;

WHEREAS, the Company's governing documents permit it to indemnify its managers to the fullest extent permitted by law and permit it to make other indemnification arrangements and agreements;

WHEREAS, the Company desires to provide the Indemnitee with specific contractual assurance of the Indemnitee's rights to full indemnification against litigation risks and expenses (regardless of any amendment to or revocation of the Company's Limited Liability Company Agreement (the "Operating Agreement") or any change in the ownership of the Company or the composition of its board of managers (the "Board")); and

WHEREAS, the Company acknowledges and agrees that providing the Indemnitee with the rights provided for herein is a material condition to Indemnitee's willingness to serve on the Board.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the Company and the Indemnitee do hereby covenant and agree as follows:

1. Definitions.

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a manager of the Company, (ii) in any capacity with respect to any employee benefit plan of the Company or (iii) as a manager (or comparable position) of any other Entity at the request of the Company. For purposes of subsection (iii) of this Section l(a), a manager of the Company who is serving or has served as a manager or director of a Subsidiary shall be deemed to be serving as the request of the Company.

(b) "Entity" shall mean any corporation, partnership, limited liability company, joint venture, company, foundation, association, organization or other legal entity.

(c) "Expenses" shall mean all fees, costs and expenses incurred in connection with any Proceeding, including, without limitation, attorneys' fees, disbursements and retainers (including, without limitation, any fees, disbursements and retainers incurred by the Indemnitee pursuant to Section 10 of this Agreement), fees and disbursements of expert witnesses, private investigators and professional advisors (including, without

limitation, accountants and investment bankers), court costs, transcript costs, fees of experts, travel expenses, duplicating, printing and binding costs, telephone and fax transmission charges, postage, delivery services, secretarial services and other disbursements and expenses.

(d) "Indemnifiable Expenses," "Indemnifiable Liabilities" and "Indemnifiable Amounts" shall have the meanings ascribed to those terms in Section 3(a) below.

(e) "Investor Steering Committee" shall mean the committee of representatives of SSR Capital Partners, LP, Edge Capital Investments Ltd., Rhino Holdings, Convergent Wealth Advisors and Bermuda Commercial Bank Limited which addressed issues relating to the settlement of claims against Sun Capital Healthcare, Inc., Sun Capital, Inc., Promise Healthcare, Inc., Success Healthcare, LLC and their affiliates (collectively, the "Sun Group") by the receivership of Founding Partners Capital Management Company, Founding Partners Stable-Value Fund, L.P., Founding Partners Stable-Value Fund II, L.P., Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, L.P. (collectively, "Founding Partners").

(f) "Liabilities" shall mean judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement.

(g) "Proceeding" shall mean any threatened or pending claim, action, suit, arbitration, alternate dispute resolution process, investigation, administrative hearing, appeal, or any other proceeding, whether civil, criminal, administrative, arbitrative or investigative, whether formal or informal, including a proceeding initiated by the Indemnitee pursuant to Section 10 of this Agreement to enforce the Indemnitee's rights hereunder.

(h) "Subsidiary" shall mean any Entity of which the Company owns (either directly or indirectly) either (i) a general partner, managing member or other similar interest or (ii) (A) 50% or more of the voting power of the voting capital equity interests of such Entity, or (B) 50% or more of the outstanding voting capital stock or other voting equity interests of such Entity.

2. Services of Indemnitee. In consideration of the Company's covenants and commitments hereunder, the Indemnitee agrees to serve or continue to serve as a manager on the Board. However, this Agreement shall not impose any obligation on the Indemnitee or the Company to continue the Indemnitee's service to the Company beyond any period otherwise required by law or by other agreements or commitments of the parties, if any.

3. Agreement to Indemnify. The Company hereby agrees to hold harmless and indemnify the Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Subject to the exceptions contained in Section 4(a) and Section 6 below, if the Indemnitee was or is a party or is threatened to be made a party to or participant in

any Proceeding (other than an action by or in the right of the Company) by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Expenses and Liabilities incurred or paid by the Indemnitee or on the Indemnitee's behalf in connection with such Proceeding (referred to herein as "Indemnifiable Expenses" and "Indemnifiable Liabilities," respectively, and collectively as "Indemnifiable Amounts").

(b) Subject to the exceptions contained in Section 4(b) and Section 6 below, if the Indemnitee was or is, or is threatened to be made, a party to or participant in any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the Indemnitee's Corporate Status, the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses.

(c) In addition to, and without regard to any limitations on, the indemnification provided for in Section 3(a) and (b), the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Amounts if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of the Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to the Indemnitee that is finally determined to be unlawful under Delaware law.

(d) Subject to the exceptions contained in Section 4(c) if the Indemnitee was or is a party or is threatened to be made a party to or participant in any Proceeding ~~principally~~ by reason of acts or omissions arising from the Indemnitee's having been a member of the Investor Steering Committee, then the Indemnitee shall be indemnified and held harmless by the Company against all Indemnifiable Expenses, but shall not be indemnified for any Indemnifiable Liabilities related ~~thereto~~to such specific acts or omissions.

4. **Exceptions to Indemnification.** The Indemnitee shall be entitled to indemnification under Section 3(a) and Section 3(b) above in all circumstances other than the following:

(a) If indemnification is requested under Section 3(a) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (i) in good faith and (ii) in a manner the Indemnitee reasonably believed to be in the best interests of the Company, or, with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Amounts hereunder.

(b) If indemnification is requested under Section 3(b) and

(i) it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee failed to act (A) in good faith and (B) in a manner the Indemnitee believed to be in the best interests of the Company, then the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder.

(ii) it has been adjudicated finally by a court of competent jurisdiction that the Indemnitee is liable to the Company with respect to any claim, issue or matter involved in the Proceeding out of which the claim for indemnification has arisen, then no Indemnifiable Expenses shall be paid with respect to such claim, issue or matter unless the court of competent jurisdiction in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such Indemnifiable Expenses which such court shall deem proper.

(c) If indemnification is requested under Section 3(d) and it has been adjudicated finally by a court of competent jurisdiction that, in connection with the subject of the Proceeding out of which the claim for indemnification has arisen, the Indemnitee (i) failed to act in good faith, or (ii) engaged in gross negligence, fraud or self-dealing, or with respect to any criminal action or proceeding, the Indemnitee had reasonable cause to believe that the Indemnitee's conduct was unlawful, the Indemnitee shall not be entitled to payment of Indemnifiable Expenses hereunder. ~~Moreover, the indemnification provided for in Section 3(d) shall not apply to any Proceedings involving (x) any claims made by any member(s) of the Investor Steering Committee against any other member(s) of the Investor Steering Committee, or (y) acts or omissions by the Indemnitee as a member of the Investor Steering Committee which were not in furtherance of the settlement of claims between the Sun Group and Founding Partners, as reasonably determined by the other members of the Company's Board.~~

5. **Procedure for Payment of Indemnifiable Amounts**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Amounts for which the Indemnitee seeks payment under Section 3 of this Agreement and a short description of the basis for the claim. The Company shall pay such Indemnifiable Amounts to the Indemnitee within ten (10) calendar days of receipt of the request. At the request of the Company, the Indemnitee shall furnish such documentation and information as are reasonably available to the Indemnitee and necessary to establish that the Indemnitee is entitled to indemnification hereunder.

6. **Indemnification for Expenses if Indemnitee is Wholly or Partly Successful.** Notwithstanding anything contained in this Agreement to the contrary, to the extent that the Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, the Indemnitee shall be indemnified against all Indemnifiable Amounts in connection therewith. If the Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify the Indemnitee against all Indemnifiable Amounts in connection with each successfully resolved claim, issue or

matter. For purposes of this Agreement, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter. Notwithstanding any of the foregoing, nothing herein shall be construed to limit an Indemnitee's right to indemnification which he or she would otherwise be entitled to pursuant to Section 3 hereof, regardless of the Indemnitee's success in a Proceeding.

7. **Effect of Certain Resolutions**. Neither the settlement or termination of any Proceeding nor the failure of the Company to award indemnification or to determine that indemnification is payable shall create an adverse presumption that the Indemnitee is not entitled to indemnification hereunder. In addition, the termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in the best interests of the Company or, with respect to any criminal action or proceeding, had reasonable cause to believe that the Indemnitee's action was unlawful.

8. **Agreement to Advance Expenses; Conditions**. The Company shall pay to the Indemnitee all Indemnifiable Expenses incurred by the Indemnitee in connection with any Proceeding, including a Proceeding by or in the right of the Company, in advance of the final disposition of such Proceeding. The Indemnitee hereby undertakes to repay the amount of Indemnifiable Expenses paid to the Indemnitee if it is finally determined by a court of competent jurisdiction that the Indemnitee is not entitled under this Agreement to, or is prohibited by applicable law from, indemnification with respect to such Indemnifiable Expenses. For avoidance of doubt, any advances and undertakings to repay shall be unsecured and interest free.

9. **Procedure for Advance Payment of Expenses**. The Indemnitee shall submit to the Company a written request specifying the Indemnifiable Expenses for which the Indemnitee seeks advancement under Section 8 of this Agreement, together with documentation evidencing that the Indemnitee has incurred such Indemnifiable Expenses. Payment of Indemnifiable Expenses under Section 8 shall be made no later than ten (10) calendar days after the Company's receipt of such request.

10. **Remedies of Indemnitees.**

(a) Right to Petition Court. In the event that the Indemnitee makes a request for payment of Indemnifiable Amounts under Section 3 and Section 5 herein or a request for an advancement of Indemnifiable Expenses under Sections 8 and Section 9 herein and the Company fails to make such payment or advancement in a timely manner pursuant to the terms of this Agreement, the Indemnitee may petition a court to enforce the Company's obligations under this Agreement.

(b) Expenses. The Company agrees to reimburse the Indemnitee in full for any Expenses incurred by the Indemnitee in connection with investigating, preparing for, litigating, defending or settling any action brought by the Indemnitee under Section 10(a) above; provided, however, that if the Indemnitee is unsuccessful, on the merits in such action, then the Company shall have no obligation to the Indemnitee under this Section 10(b).

(c) Validity of Agreement. The Company shall be precluded from asserting in any Proceeding, including, without limitation, an action under Section 10(a) above, that the provisions of this Agreement are not valid, binding and enforceable or that there is insufficient consideration for this Agreement and shall stipulate in court that the Company is bound by all the provisions of this Agreement.

(d) Failure to Act Not a Defense. The failure of the Company (including the Board or any committee thereof, independent legal counsel, or members) to make a determination concerning the permissibility of the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses under this Agreement shall not be a defense in any action brought under Section 10(a) above, and shall not create a presumption that such payment or advancement is not permissible.

11. Notice by Indemnitee. The Indemnitee agrees to notify the Company promptly upon being served with any summons, citation, subpoena, complaint, indictment, information, or other document relating to any Proceeding which may result in the payment of Indemnifiable Amounts or the advancement of Indemnifiable Expenses hereunder; provided, however, that the failure to give any such notice shall not disqualify the Indemnitee from the right to receive payments of Indemnifiable Amounts or advancements of Indemnifiable Expenses.

12. Representations and Warranties of the Company. The Company hereby represents and warrants to the Indemnitee as follows:

(a) Authority. The Company has all necessary power and authority to enter into, and be bound by the terms of, this Agreement, and the execution, delivery and performance of the undertakings contemplated by this Agreement have been duly authorized by the Company.

(b) Enforceability. This Agreement, when executed and delivered by the Company in accordance with the provisions hereof, shall be a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by equitable principles, applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally.

13. Contract Rights Not Exclusive; Survival of Rights; Insurance.

(a) The rights to payment of Indemnifiable Amounts and advancement of Indemnifiable Expenses provided by this Agreement shall be in addition to, but not exclusive of, any other rights which the Indemnitee may have at any time under applicable law, the Operating Agreement, or any other agreement, vote of members or managers (or a committee of managers), or otherwise, both as to action in the Indemnitee's official capacity and as to action in any other capacity as a result of the Indemnitee's serving as a manager of the Company. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or

repeal. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Indemnitee shall be covered by any managers and officers liability insurance and any other insurance policy or policies providing liability insurance for managers, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, and the Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such manager, officer, employee, agent or fiduciary under such policy or policies. At the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

14. Successors. This Agreement shall be (a) binding upon all successors and assigns of the Company (including any transferee of all or a substantial portion of the business, equity and/or assets of the Company and any direct or indirect successor by merger or consolidation or otherwise by operation of law) and (b) binding on and shall inure to the benefit of the heirs, personal representatives, executors and administrators of the Indemnitee. This Agreement shall continue for the benefit of the Indemnitee and such heirs, personal representatives, executors and administrators after the Indemnitee has ceased to have Corporate Status.

15. Change in Law. To the extent that a change in Delaware law (whether by statute or judicial decision) shall permit broader indemnification or advancement of expenses than is provided under the terms of the Operating Agreement and this Agreement, the Indemnitee shall be entitled to such broader indemnification and advancements, and this Agreement shall be deemed to be amended to such extent.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement, or any clause thereof, shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, in whole or in part, such provision or clause shall be limited or modified in its application to the minimum extent necessary to make such provision or clause valid, legal and enforceable, and the remaining provisions and clauses of this Agreement shall remain fully enforceable and binding on the parties.

17. Modifications and Waiver. Except as provided in Section 15 above with respect to changes in Delaware law which broaden the right of the Indemnitee to be indemnified by the Company, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by each of the parties hereto. No waiver of any of the provisions of this

Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement (whether or not similar), nor shall such waiver constitute a continuing waiver.

18. General Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand, (b) when transmitted by facsimile and receipt is acknowledged, or (c) if mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed

(i) If to the Indemnitee, to:

____
____
____
Fax: ____________________
Tel: ____________________

(ii) If to the Company, to:

Founding Partners Designee, LLC
____
____
____
Fax: ____________________
Tel: ____________________

or to such other address as may have been furnished in the same manner by any party to the others.

19. Governing Law. This Agreement shall be governed by and construed and enforced under the laws of Delaware without giving effect to the provisions thereof relating to conflicts of law.

20. Consent to Jurisdiction. Each of the Company and the Indemnitee hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the Court of Chancery of the State of Delaware and any United States District Court of competent jurisdiction located in the State of Delaware (the "Courts"), for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees not to commence any litigation relating thereto except in such Courts. Each of the Company and the Indemnitee hereby irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of or relating to this Agreement in the Courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such Proceeding brought in any such Court has been brought in an inconvenient forum.

21. ~~21.~~ This Agreement supercedes any and all prior agreements between the Company and the Indemnitee regarding the terms and conditions of the Indemnitee's indemnification by the Company.

[SIGNATURES ON FOLLOWING PAGE(S).]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

FOUNDING PARTNERS DESIGNEE, LLC

By:________________________________
Name:
Title:

INDEMNITEE:

____
[__________]

www.SharkRepellent.net

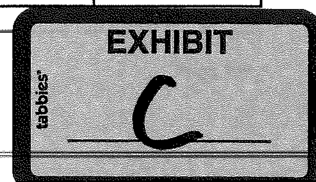
Takeover Defense Trend Analysis
Current Snapshot

Percentage of Firms By Defense Type (1)

	S&P 500	S&P 400	S&P 600	S&P 1500	Fortune 500
Number of Companies	472	393	593	1458	446
Classified Board	9.53	38.93	46.37	32.44	12.33
Majority Vote Standard to Elect Directors	85.81	55.47	27.49	53.91	79.15
Plurality Vote Standard w/Resignation Policy	8.05	17.81	17.71	14.61	8.74
Board Fills All Vacancies	78.81	81.68	76.22	78.53	80.27
Shareholders Cannot Call Special Meetings	40.89	50.38	48.57	46.57	42.83
No Action by Written Consent	69.92	72.52	71.33	71.19	69.28
Fair Price Provision (company – charter/bylaws)	16.53	17.56	12.48	15.16	14.80
Fair Price Provision (company or state)	20.76	23.92	18.21	20.58	19.28
Supermajority Vote for Mergers	21.19	26.97	23.10	23.53	19.06
Directors Removed Only for Cause	33.26	45.80	48.57	42.87	30.72
Supermajority Vote to Remove Directors	22.25	32.06	31.87	28.81	18.83
Locked-In Charter Provisions (2)	42.37	56.23	59.19	52.95	41.03
Locked-In Bylaw Provisions (2)	28.81	37.66	45.03	37.79	28.92
Expanded Constituency Provision (company – charter/bylaws)	7.42	12.47	9.95	9.81	6.95
Expanded Constituency Provision (company or state)	28.18	33.08	30.69	30.52	27.80
No Cumulative Voting	96.19	92.11	93.59	94.03	95.74
Blank Check Preferred Stock	94.92	94.40	93.42	94.17	95.52
State Takeover Statutes (3)					
Control Share Acquisition	11.44	17.05	15.01	14.40	10.99
Control Share Cash-Out	1.48	2.04	1.69	1.71	1.57
Freezeout Provision	67.16	58.52	59.19	61.59	66.37
Freezeout with Fair Price Provision	22.88	22.90	21.59	22.36	20.40
Fair Price Provision	5.93	7.63	6.58	6.65	5.83
Disgorgement Provision	3.39	4.83	3.54	3.84	4.71
Anti-Greenmail Provision	7.20	5.85	7.76	7.06	6.50
Golden Parachute Restrictions	2.12	1.78	2.70	2.26	1.57
Severance Pay	2.12	1.78	3.71	2.67	1.57
Assumption of Labor Contracts	66.53	60.3	62.39	63.16	69.51
Expanded Constituency Provision	22.03	22.39	23.10	22.57	21.75
Poison Pill Endorsement	34.32	38.17	37.61	36.69	30.27
Number of Companies (For Poison Pills)	500	400	600	1500	460
Poison Pill In Force	6.80	12.00	10.83	9.80	6.74

	DJIA	Russell 1000	Russell 2000	Russell 3000	Nasdaq 100	SharkRepellent Universe
Number of Companies	30	953	1902	2855	90	3862
Classified Board	0.00	24.87	50.68	42.07	18.89	43.35
Majority Vote Standard to Elect Directors	93.33	66.53	22.40	37.13	73.33	29.73
Plurality Vote Standard w/Resignation Policy	6.67	11.75	10.46	10.89	6.67	8.80
Board Fills All Vacancies	86.67	79.12	80.34	79.93	75.56	79.80
Shareholders Cannot Call Special Meetings	10.00	46.80	53.00	50.93	45.56	50.96
No Action by Written Consent	63.33	68.94	73.03	71.66	61.11	69.37
Fair Price Provision (company – charter/bylaws)	3.33	13.64	9.15	10.65	6.67	9.35
Fair Price Provision (company or state)	10.00	18.15	13.88	15.31	8.89	13.96
Supermajority Vote for Mergers	20.00	20.88	18.72	19.44	18.89	18.31
Directors Removed Only for Cause	16.67	39.98	51.68	47.78	24.44	47.64
Supermajority Vote to Remove Directors	3.33	26.55	34.28	31.70	14.44	32.37
Locked-In Charter Provisions (2)	13.33	48.69	59.88	56.15	34.44	54.30

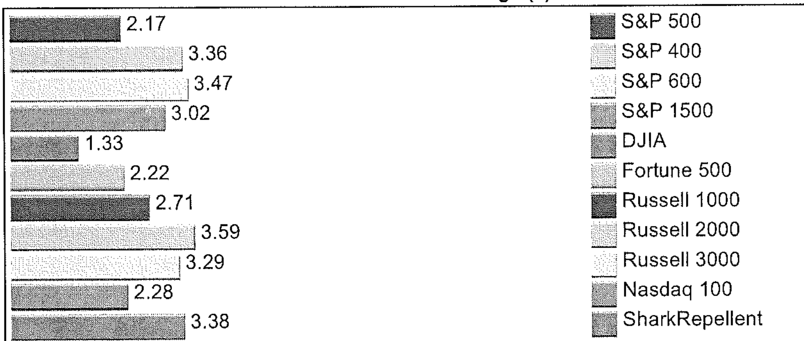
© 2014 FactSet Research Systems Inc. All Rights Reserved.



www.SharkRepellent.net

Locked-In Bylaw Provisions (2)	3.33	35.36	45.48	42.10	26.67	41.79
Expanded Constituency Provision (company – charter/bylaws)	13.33	8.08	8.89	8.62	1.11	8.62
Expanded Constituency Provision (company or state)	43.33	25.92	25.24	25.46	14.44	25.61
No Cumulative Voting	96.67	95.59	94.64	94.96	95.56	95.08
Blank Check Preferred Stock	93.33	94.75	93.48	93.91	94.44	93.11
State Takeover Statutes (3)						
Control Share Acquisition	10.00	12.17	12.67	12.50	6.67	12.82
Control Share Cash-Out	0.00	1.68	1.42	1.51	0.00	1.29
Freezeout Provision	63.33	61.49	59.10	59.89	68.89	61.29
Freezeout with Fair Price Provision	26.67	20.88	20.03	20.32	14.44	20.04
Fair Price Provision	6.67	5.56	5.47	5.50	3.33	5.23
Disgorgement Provision	3.33	3.57	3.00	3.19	0.00	2.77
Anti-Greenmail Provision	16.67	5.56	4.73	5.01	4.44	4.84
Golden Parachute Restrictions	6.67	1.47	1.63	1.58	1.11	1.68
Severance Pay	0.00	1.99	2.21	2.14	2.22	1.92
Assumption of Labor Contracts	60	67.36	64.25	65.29	75.55	65.67
Expanded Constituency Provision	33.33	18.89	19.09	19.02	13.33	19.16
Poison Pill Endorsement	36.67	33.05	34.75	34.19	23.33	33.79
Number of Companies (For Poison Pills)	30	1022	1998	3020	100	3862
Poison Pill In Force	0.00	8.41	10.26	9.64	7.00	11.99

Mean Bullet Proof Ratings (4)



(1) Percentages are based upon the number of eligible and active companies in the SharkRepellent.net database. For the Poison Pill In Force calculation by index, non-US companies are included.
(2) Supermajority vote requirement (e.g., 66.67%, 75%, 80%) for shareholders to amend/repeal at least one charter or bylaw provision.
(3) The percentages are based on companies incorporated in a state with the statute and have not opted out.
(4) The FactSet TrueCourse Bullet Proof Rating is a weighted average index comprised of significant components that impact takeover defenses. The rating scale is from 0 to 10 with a 10 representing the most formidable defenses. The rating system is a relative measurement and is not intended to measure the probability of a successful defense. Statistics are based upon the number of eligible and active companies in the SharkRepellent.net database.

© 2014 FactSet Research Systems Inc. All Rights Reserved.