# OPERATING AGREEMENT OF

[INSERT: Company Name] LLC

· · · · · · · · · · · · · · · · · · ·	is "Agreement") is entered into and shall be			
effective as of, 20 (the	ne "Effective Date"), by and among			
,	and			
	ectively, "Management") and DREXEL oration ("Drevel") on the terms and conditions set			
UNIVERSITY, a Pennsylvania nonprofit corporation (" <i>Drexel</i> "), on the terms and conditions set forth below:				
Total below.	1			
ART	TICLE I.			
THE COMPANY				
THE	OMIANI			
SECTION 1.1. Formation and C	Continuation. Management formed the Company			
as a limited liability company under and pursu				
	ne Secretary of State for the State of Delaware. The			
	of the Secretary of State, State of Delaware, shall			
constitute notice that the Company is a limited liability company. The Company is hereby				
admitting Drexel as a Member simultaneously with the execution of this Agreement and the agreement of all such Members to operate the Company upon the terms and conditions set forth				
in this Agreement. The rights and liabilities of the Members shall be as provided under the Act, the Certificate, and this Agreement.				
the continente, and this regreement.				
	e of the Company is [INSERT: name of			
	any shall be conducted in such name. The Manager			
may change the name of the Company upon te	n (10) Business Days notice to the Members.			
GEGTION 1.2				
SECTION 1.3 Purpose; Powers	<u>.</u>			
(a) The purposes of the Cor	mpany are (i) to operate the Business, (ii) to			
, , , , , , , , , , , , , , , , , , ,	mbers may approve, and (iii) to engage in any and			
all activities related or incidental to the purposes set forth in clauses (i) and (ii).				
1 1				

(c) Notwithstanding the foregoing, neither the Company nor any entity that is an Affiliate of the Company shall (i) engage in any activities involving either the carrying on of political lobbying or otherwise attempting to influence legislation or (ii) participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

proper, advisable, incidental, or convenient to or in furtherance of the purposes of the Company set forth in this Section 1.3 and has, without limitation, any and all powers that may be exercised

on behalf of the Company by the Management Committee pursuant to Article V hereof.

The Company has the power to do any and all acts necessary, appropriate,

- SECTION 1.4. <u>Principal Place of Business</u>. The principal place of business of the Company shall be at [INSERT: address of principal place of business]. The Manager may change the principal place of business of the Company to any other place within or without the State of Delaware upon ten (10) Business Days notice to the Members. The registered office of the Company in the State of Delaware initially is located at [INSERT: address of registered agent].
- SECTION 1.5. <u>Term.</u> The term of the Company commenced on the date of the filing of the Certificate and shall continue until the winding up and liquidation of the Company and its business is completed following a Dissolution Event, as provided in Article XII hereof.

#### SECTION 1.6. Filings; Agent for Service of Process.

- (a) The Management Committee shall take any and all other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware, including the preparation and filing of such amendments to the Certificate and such other assumed name certificates, documents, instruments, and publications as may be required by law, including, without limitation, action to reflect:
  - (i) A change in the Company name;
  - (ii) A correction of false or erroneous statements in the Certificate or the desire of the Members to make a change in any statement therein in order that the Certificate shall accurately represent the agreement among the Members; or
  - (iii)A change in the time for dissolution of the Company as stated in the Certificate and in this Agreement.
- (b) The Members and the Management Committee shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the laws of any other jurisdictions in which the Company engages in business.
- (c) The registered agent for service of process on the Company in the State of Delaware shall be **INSERT:** name of registered agent] or any successor as appointed by the Members in accordance with the Act.
- (d) Upon the dissolution and completion of the winding up and liquidation of the Company in accordance with Article XII, the Management Committee shall promptly execute and cause to be filed a certificate of cancellation in accordance with the Act and the laws of any other jurisdictions in which the Management Committee deems such filing necessary or advisable.
- SECTION 1.7. <u>Title to Property</u>. All Property owned by the Company shall be owned by the Company as an entity, no Member shall have any ownership interest in such

Property in its individual name, and each Member's interest in the Company shall be personal property for all purposes. At all times after the Effective Date, the Company shall hold title to all of its Property in the name of the Company and not in the name of any Member.

SECTION 1.8. <u>Payments of Individual Obligations</u>. The Company's credit and assets shall be used solely for the benefit of the Company, and no asset of the Company shall be Transferred or encumbered for, or in payment of, any individual obligation of any Member.

#### SECTION 1.9. Independent Activities; Transactions With Affiliates.

- (a) Each Manager shall be required to devote such time to the affairs of the Company as may be necessary to manage and operate the Company, and unless otherwise restricted in a contract with the Company, shall be free to serve any other Person or enterprise in any capacity that such Manager may deem appropriate in his, her, or its discretion.
- (b) Insofar as permitted by applicable law, unless otherwise restricted in a contract with the Company, neither this Agreement nor any activity undertaken pursuant hereto shall prevent any Member, in its capacity as a Member, from engaging in whatever activities they choose, whether the same are competitive with the Company or otherwise, and any such activities may be undertaken without having or incurring any obligation to offer any interest in such activities to the Company or any other Member, or require any Member to permit the Company or any other Member or Manager to participate in any such activities, and as a material part of the consideration for the execution of this Agreement by each Member, each Member hereby waives, relinquishes, and renounces any such right or claim of participation.
- (c) To the extent permitted by applicable law and subject to the provisions of this Agreement, the Management Committee is hereby authorized to cause the Company to purchase Property from, sell Property to, or otherwise deal with any Member or Manager, acting on its own behalf, or any Affiliate of any Member or Manager, provided that any such purchase, sale, or other transaction shall be made on terms and conditions that are no less favorable to the Company than if the sale, purchase, or other transaction had been made with an independent third party.
- SECTION 1.10. <u>Definitions</u>. Capitalized words and phrases used in this Agreement have meanings set forth in Exhibit C.

#### ARTICLE II.

#### **MEMBERS' CAPITAL CONTRIBUTIONS**

- SECTION 2.1. <u>Original Capital Contributions</u>. The name, address, original Capital Contribution, and initial Percentage Interest of each of the Members, along with the initial Gross Asset Value of each Member's original Capital Contribution, is set forth on Exhibit A.
- SECTION 2.2. <u>Contribution Agreements</u>. The contributions made by **[INSERT: founding non-Drexel Members]** pursuant to Section 2.1 hereof shall be subject to the terms and conditions (if any) provided for on Exhibit A; the contributions made by Drexel shall be subject {PAGE }

to the terms and provisions of the Securities Purchase Agreement that is attached hereto as Exhibit B.

SECTION 2.3. <u>Additional Capital Contributions</u>. Except as provided for in Section 4.2 of this Agreement (with respect to tax withholding), the Members may make additional Capital Contributions only with the written consent of the Management Committee, in which event the Company shall issue to the contributing Member additional Units of an amount to be agreed by the Management Committee.

SECTION 2.4. Units. The Company is authorized to issue up to [INSERT: total number of authorized Units] ( ) Units. In consideration for the original Capital Contribution described in Section 2.2 and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Member has received the Units set forth opposite such Member's name on Exhibit A, as such exhibit may be amended from time to time to reflect changes in the Members of the Company or the number of Units owned by each Member.

#### ARTICLE III.

# ALLOCATIONS

- SECTION 3.1. <u>Profits</u>. After giving effect to the special allocations set forth in Sections 3.3 and 3.4, Profits for any Allocation Year shall be allocated to the Members in proportion to their Percentage Interests.
- SECTION 3.2. <u>Losses</u>. After giving effect to the special allocations set forth in Sections 3.3 and 3.4 and subject to Section 3.5, Losses for any Allocation Year shall be allocated to the Members in proportion to their Percentage Interests.
- SECTION 3.3. <u>Special Allocations</u>. The following special allocations shall be made in the following order:
- (a) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Article III, if there is a net decrease in Company Minimum Gain during any Allocation Year, each Member shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 3.3(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.
- (b) <u>Member Minimum Gain Chargeback</u>. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article III, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member {PAGE }

Nonrecourse Debt during any Allocation Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 3.3(b) is intended to comply with the minimum gain chargeback 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 Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), or Section 1.704-1(b)(2)(ii)(d)(6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 3.3(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article III have been tentatively made as if this Section 3.3(c) were not in this Agreement.
- Capital Account Deficit at the end of any Allocation Year, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 3.3(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.3(c) and this Section 3.3(d) were not in this Agreement.
- (e) <u>Nonrecourse Deductions</u>. Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.
- (f) <u>Member Nonrecourse Deductions</u>. Any Member Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).
- (g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially

allocated to the Members in accordance with their interests in the Company in the event Regulations Section  $1.704-1(b)(2)(iv)(\underline{m})(\underline{2})$  applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

- (h) <u>Allocations Relating to Taxable Issuance of Company Units</u>. Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of Units by the Company to a Member (the "*Issuance Items*") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.
- SECTION 3.4. Curative Allocations. The allocations set forth in Sections 3.3(a), 3.3(b), 3.3(c), 3.3(d), 3.3(e), 3.3(f), 3.3(g), and 3.5 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 3.4. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the Management Committee shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the greatest extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 3.1, 3.2, and 3.3(h).
- SECTION 3.5. Loss Limitation. Losses allocated pursuant to Section 3.2 hereof shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Allocation Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 3.2 hereof, the limitation set forth in this Section 3.5 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Regulations Section 1.704-1(b)(2)(ii)(d).

#### SECTION 3.6. Other Allocation Rules.

- (a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Management Committee using any permissible method under Code Section 706 and the Regulations thereunder.
- (b) The Members are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their shares of Company income and loss for income tax purposes.
  - (c) Solely for purposes of determining a Member's proportionate share of the

"excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their Percentage Interests.

(d) To the extent permitted by Regulations Section 1.704-2(h)(3), the Manager shall endeavor to treat distributions of Net Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would not cause or increase an Adjusted Capital Account Deficit for any Member.

#### SECTION 3.7. Tax Allocations; Code Section 704(c).

- (a) Except as otherwise provided in this Section 3.7, each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under this Article III. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the "traditional method" as defined in Treas. Reg. Section 1.704-3.
- (b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.
- (c) Allocations pursuant to this Section 3.7 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

#### ARTICLE IV.

#### DISTRIBUTIONS

- SECTION 4.1. <u>Net Cash Flow</u>. Except as otherwise provided in Article XII hereof, Net Cash Flow, if any, shall be distributed as follows:
- (a) First, to the Members in proportion to their Percentage Interests in amounts reasonably estimated to enable such Members (or any Person whose tax liability is determined by reference to the income of a Member) to satisfy their required United States Federal, state and local quarterly estimated tax payments (at the assumed top rate bracket applicable to any Member); and
- (b) Second, from time to time at the discretion of the Management Committee, to the Members in proportion to their Percentage Interests.

SECTION 4.2. Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state, local, or foreign tax law with respect to any payment, distribution, or allocation to the Company or the Members shall be treated as amounts paid or distributed, as the case may be, to the Members with respect to which such amount was withheld pursuant to this Section 4.2 for all purposes under this Agreement. The Company, at the discretion of the Management Committee, is authorized to withhold from payments and distributions and to pay over to any federal, state, local, or foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state, local, or foreign law, and shall allocate any such amounts to the Members with respect to which such amount was withheld. In the event the Company lacks sufficient Net Cash Flow to fund the required withholding the Management Committee, in its sole discretion may treat any tax withheld and paid over to a taxing authority as provided for herein as a guaranteed distribution to the affected Member or may require that the affected Member provide to the Company funds sufficient to reimburse the Company for the required withholding amount, which shall be treated as a contribution by and a distribution to the affected Member on the books of the Company.

#### SECTION 4.3. Limitations on Distributions.

- (a) The Company shall make no distributions to the Members except (i) as provided in this Article IV or Section 12.1 hereof or (ii) as agreed to by all of the Members.
- (b) A Member may not receive a distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the Company, other than liability to Members on account of their Capital Contributions, would exceed the fair value of the Company's assets.

# ARTICLE V.

### MANAGEMENT

SECTION 5.1. Managers; Management Committee.

- (a) The management of the Company shall be vested in the committee of Managers (the "*Management Committee*") designated by the Members as provided in Section 5.1(c) hereof.
- (b) The number of Managers on the Management Committee shall be [INSERT: number of managers] ( ) unless otherwise provided herein. The initial Managers of the Company shall be as set forth on Exhibit D hereto.
- (c) A Manager shall remain in office until the Manager dies, resigns or is removed. The remaining managers shall appoint a replacement for any Manager so removed and such replacement Manager shall be subject to a vote of the Members at the next scheduled board meeting, provided that if no such meeting is scheduled, the Managers shall put the new Manager to a vote no later than the first anniversary of such Manager's appointment. The Members, by signing this Agreement, hereby elect the Persons identified on Exhibit D hereto as Managers of the Company until their successors are appointed.

- (e) Each Manager shall have one (1) vote. Except as otherwise provided in this Agreement, the Management Committee shall act by the affirmative vote of [a majority of the total number of members of the Committee].
- (f) Each Manager shall perform the duties as a Manager in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs the Manager's duties shall not have any liability by reason of being or having been a Manager of the Company.
- (g) The Management Committee shall have the power to delegate authority to such committees of Managers, Officers, employees, agents, and representatives of the Company as it may from time to time deem appropriate. Except as provided for in this Agreement with respect to Officers, any delegation of authority to take any action must be approved in the same manner as would be required for the Management Committee to approve such action directly.
- (h) A Manager shall not be liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation, or liability of the Company.

# SECTION 5.2. <u>Meetings of the Management Committee</u>.

- (a) The Management Committee shall hold regular meetings no less frequently than once every Fiscal Quarter and shall establish meeting times, dates, and places, and requisite notice requirements (not shorter than those provided in Section 5.2(b)), and adopt rules or procedures consistent with the terms of this Agreement. Unless otherwise approved by the Management Committee, each regular meeting of the Management Committee will be held at the Company's principal place of business. At such meetings the Management Committee shall transact such business as may properly be brought before the meeting, whether or not notice of such meeting referenced the action taken at such meeting.
- (b) Special meetings of the Management Committee may be called by any Manager. Notice of each such meeting shall be given to each Manager on the Management Committee by telephone, telecopy, telegram, or similar method (in each case, notice shall be given at least seventy-two (72) hours before the time of the meeting) or sent by first-class mail (in which case notice shall be given at least five (5) days before the meeting), unless a longer notice period is established by the Management Committee. Each such notice shall state (i) the time, date, place (which shall be at the principal office of the Company unless otherwise agreed to by all Managers), or other means of conducting such meeting and (ii) the purpose of the meeting to be so held. No actions other than those specified in the notice may be considered at any special meeting unless unanimously approved by the Managers. Any Manager may waive notice of any meeting in writing before, at, or after such meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the

meeting was not properly called.

- (c) Any action required to be taken at a meeting of the Management Committee, or any action that may be taken at a meeting of the Management Committee, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting.
- (d) Notwithstanding anything to the contrary in this Section 5.2, the Management Committee may take without a meeting any action that may be taken by the Management Committee under this Agreement if such action is approved by the unanimous written consent of the Managers.

#### SECTION 5.3. Management Committee Powers.

- (a) Except as otherwise provided in this Agreement, all powers to control and manage the Business and affairs of the Company shall be exclusively vested in the Management Committee and the Management Committee may exercise all powers of the Company and do all such lawful acts as are not by statute, the Certificate, or this Agreement directed or required to be exercised or done by the Members and in so doing shall have the right and authority to take all actions that the Management Committee deems necessary useful, or appropriate for the management and conduct of the Business, including exercising the following specific rights and powers:
- (i) Conduct its business, carry on its operations, and have and exercise the powers granted by the Act in any state, territory, district, or possession of the United States, or in any foreign country that may be necessary or convenient to effect any or all of the purposes for which it is organized;
- (ii) Acquire by purchase, lease, or otherwise any real or personal property that may be necessary, convenient, or incidental to the accomplishment of the purposes of the Company;
- (iii) Operate, maintain, finance, improve, construct, own, grant options with respect to, sell, convey, assign, mortgage, and lease any real estate and any personal property necessary, convenient, or incidental to the accomplishment of the purposes of the Company;
- (iv) Execute any and all agreements, contracts, documents, certifications, and instruments necessary or convenient in connection with the management, maintenance, and operation of the Business, or in connection with managing the affairs of the Company, including, executing amendments to this Agreement and the Certificate in accordance with the terms of this Agreement, both as Managers and, if required, as attorney-in-fact for the Members pursuant to any power of attorney granted by the Members to the Managers;
- (v) Invent, create, obtain, protect and exploit intellectual property rights;

- (vi) Borrow money and issue evidences of indebtedness necessary, convenient, or incidental to the accomplishment of the purposes of the Company, and secure the same by mortgage, pledge, or other lien on any Company assets;
- (vii) Execute, in furtherance of any or all of the purposes of the Company, any deed, lease, mortgage, deed of trust, mortgage note, promissory note, bill of sale, license, contract, or other instrument purporting to convey or encumber any or all of the Company assets;
- (viii) Prepay in whole or in part, refinance, recast, increase, modify, or extend any liabilities affecting the assets of the Company and in connection therewith execute any extensions or renewals of encumbrances on any or all of such assets;
- (ix) Care for and distribute funds to the Members by way of cash income, return of capital, or otherwise, all in accordance with the provisions of this Agreement, and perform all matters in furtherance of the objectives of the Company or this Agreement;
- (x) Contract on behalf of the Company for the employment and services or employees and/or independent contractors, such as lawyers and accountants, and delegate to such Persons the duty to manage or supervise any of the assets or operations of the Company;
- (xi) Engage in any kind of activity and perform and carry out contracts of any kind (including contracts of insurance covering risks to Company assets and Manager liability) necessary or incidental to, or in connection with, the accomplishment of the purposes of the Company, as may be lawfully carried on or performed by a limited liability company under the laws of each state in which the Company is then formed or qualified;
- (xii) Take, or refrain from taking, all actions, not expressly proscribed or limited by this Agreement, as may be necessary or appropriate to accomplish the purposes of the Company;
- (xiii) Institute, prosecute, defend, settle, compromise, and dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Company, the Members or any Manager in connection with activities arising out of, connected with, or incidental to this Agreement, and to engage counsel or others in connection therewith;
- (xiv) Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited companies, other limited liability companies, or individuals or direct or indirect obligations of the United States or of any government, state, territory, government district or municipality or of any instrumentality of any of them; and
- (xv) Indemnify a Member or Manager or former Member or Manager, and to make any other indemnification that is authorized by this Agreement in accordance with the Act.

(b) The Management Committee will appoint the Officers of the Company and will establish policies and guidelines for the hiring of employees to permit the Company to act as an operating company with respect to its Business. The Management Committee may adopt appropriate management incentive plans and employee benefit plans.

#### SECTION 5.4. Duties and Obligations of the Management Committee.

- (a) The Management Committee shall cause the Company to conduct its business and operations separate and apart from that of any Member or Manager or any of its Affiliates, including, without limitation, (i) segregating Company assets and not allowing funds or other assets of the Company to be commingled with the funds or other assets of, held by, or registered in the name of any Member or Manager or any of its Affiliates, (ii) maintaining books and financial records of the Company separate from the books and financial records of any Member or Manager and its Affiliates, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization of the Members, (iii) causing the Company to pay its liabilities from assets of the Company, and (iv) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.
- (b) The Management Committee shall take all actions that may be necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business in which it is engaged and (ii) for the accomplishment of the Company's purposes, including the acquisition, development, protection, maintenance, preservation, operation, transfer and sale of Property in accordance with the provisions of this Agreement and applicable laws and regulations.
- (c) The Management Committee shall be under a fiduciary duty to conduct the affairs of the Company in the best interests of the Company and of the Members, including the acquisition, development, protection, maintenance, preservation, operation, transfer and sale of all of the Property for the exclusive benefit of the Company.
- Managers for all expenses incurred and paid by any of them in the organization of the Company and as authorized by the Company, in the conduct of the Company's business, including, but not limited to, expenses of maintaining an office, telephones, travel, office equipment, and secretarial and other personnel as may reasonably be attributable to the Company. Such expenses shall not include any expenses incurred in connection with a Member's or Manager's exercise of its rights as a Member or a Manager apart from the authorized conduct of the Company's business. Such reimbursement shall be treated as expenses of the Company and shall not be deemed to constitute distributions to any Member of profit, loss, or capital of the Company.

#### SECTION 5.6. Indemnification of the Managers and Officers.

(a) Unless otherwise provided in Section 5.6(d) hereof, the Company shall

indemnify, save harmless, and pay all judgments and claims against any Manager or Officer relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any Manager or Officer in connection with the Business, including reasonable attorneys' fees incurred by the Manager or Officer in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred.

- (b) Unless otherwise provided in Section 5.6(d) hereof, in the event of any action by a Member against any Manager or Officer, including a Company derivative suit, the Company shall indemnify, save harmless, and pay all expenses of such Manager or Officer, including reasonable attorneys' fees incurred in the defense of such action.
- (c) Unless otherwise provided in Section 5.6(d) hereof, the Company shall indemnify, save harmless, and pay all expenses, costs, or liabilities of any Manager or Officer, if for the benefit of the Company and in accordance with this Agreement, said Manager or Officer makes any deposit or makes any other similar payment or assumes any obligation in connection with any Property proposed to be acquired by the Company and suffers any financial loss as the result of such action.
- (d) Notwithstanding the provisions of Sections 5.6(a), 5.6(b), and 5.6(c) above, such Sections shall be enforced only to the maximum extent permitted by law and no Manager shall be indemnified from any liability for the fraud, intentional misconduct, gross negligence, or a knowing violation of the law that was material to the cause of action.
- (e) The obligations of the Company set forth in this Section 5.6 are expressly intended to create third-party beneficiary rights of each of the Managers and Officers and any Member is authorized, on behalf of the Company, to give written confirmation to any Manager or Officer of the existence and extent of the Company's obligations to such Manager or Officer hereunder.

#### ARTICLE VI.

#### **ROLE OF MEMBERS**

- SECTION 6.1. Rights or Powers. The Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.
- SECTION 6.2. <u>Voting Rights</u>. No Member has any voting right except with respect to those matters specifically reserved for a Member vote that are set forth in this Agreement and as required in the Act.

#### SECTION 6.3. Meetings of the Members.

(a) Meetings of the Members may be called upon the written request of any Member. The call shall state the location of the meeting and the nature of the business to be {PAGE }

transacted. Notice of any such meeting shall be given to all Members not less than seven (7) Business Days or more than thirty (30) days prior to the date of such meeting. Members may vote in person, by proxy, or by telephone at such meeting and may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this Section 6.3. Except as otherwise expressly provided in this Agreement, the vote of at least \_\_\_\_\_\_ percent (\_\_\_\_\_%) of the Members shall be required to constitute the act of the Members.

- (b) Each Member may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing it.
- (c) Each meeting of Members shall be conducted by the President or such other Officer or individual Person as the President deems appropriate.
- (d) Notwithstanding this Section 6.3, the Company may take any action contemplated under this Agreement as approved by the consent of the Members, such consent to be provided in writing, or by telephone or facsimile, if such telephone conversation or facsimile is followed by a written summary of the telephone conversation or facsimile communication sent by registered or certified mail, postage and charges prepaid, addressed as described in Section 14.1 hereof, or to such other address as such Person may from time to time specify by notice to the Members and Managers.
- SECTION 6.4. <u>Required Member Consents</u>. Notwithstanding any other provision of this Agreement, no action may be taken by the Company (whether by the Management Committee or otherwise) in connection with any of the following matters without the vote or written consent of at least percent ( %) of the Members:
- (a) Any activity that is not consistent with the purposes of the Company as set forth in Section 1.3 hereof;
  - (b) Any act in contravention of this Agreement;
  - (c) A material change in the nature of the Business;
  - (d) Any sale of substantially all of the assets of the Company;
  - (e) Any transaction to liquidate or dissolve the Company; and
- (f) Any transaction by the Company to merge or consolidate with another Person.
  - SECTION 6.5. <u>Withdrawal/Resignation</u>. Except as otherwise provided in Articles {PAGE }

IV and XII hereof, no Member shall demand or receive a return on or of its Capital Contributions or withdraw from the Company without the consent of all Members. Except as otherwise provided in the Act or this Agreement, upon resignation, any resigning Member is entitled to receive only the distribution to which the Member is entitled under this Agreement, which shall be equal to the fair value of the Member's Units in the Company as of the date of resignation. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive Property other than cash except as may be specifically provided herein and in any agreement pertaining to the contribution of such Property, including but not limited to the License Agreement.

SECTION 6.6. <u>Member Compensation</u>. No Member shall receive any interest, salary, or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company, or otherwise, in its capacity as a Member, except as otherwise provided in this Agreement.

SECTION 6.7. Members Liability. No Member shall be liable under a judgment, decree, or order of a court, or in any other manner, for the Debts or any other obligations or liabilities of the Company. A Member shall be liable only to make its Capital Contributions and shall not be required to restore a deficit balance in its Capital Account or to lend any funds to the Company or, after its Capital Contributions have been made, to make any additional contributions, assessments, or payments to the Company, provided that a Member may be required to repay distributions made to it as provided in Section 18-607 of the Act. The Manager shall not have any personal liability for the repayment of any Capital Contributions of any Member.

SECTION 6.8. <u>Partition</u>. While the Company remains in effect or is continued, each Member agrees and waives its rights to have any Company Property partitioned, or to file a complaint or to institute any suit, action, or proceeding at law or in equity to have any Company Property partitioned, and each Member, on behalf of itself, its successors, and its assigns hereby waives any such right.

SECTION 6.9. <u>Confidentiality</u>. The Company will enter into separate confidentiality agreements, as needed, with the Managers, Members, Officers, employees and consultants of the Company in order to protect the confidential information of the Company.

SECTION 6.10. Transactions Between a Member and the Company. Except as otherwise provided by applicable law, any Member may in its discretion, but shall not be obligated to, lend money to the Company, act as surety for the Company, and transact other business with the Company. A Member has the same rights and obligations when transacting business with the Company as a person or entity who is not a Member. A Member, any Affiliate thereof or an employee, stockholder, agent, director, or officer of a Member or any Affiliate thereof, may also be an employee or be retained as an agent of the Company. The existence of these relationships and acting in such capacities will not result in the Member being deemed to be participating in the control of the business of the Company or otherwise affect the limited liability of the Member.

SECTION 6.11. Other Instruments. Each Member, other than Drexel, hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney, and other instruments and to take such other action as the Management Committee deems necessary, useful, or appropriate to comply with any laws, rules, or regulations as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

#### ARTICLE VII.

#### **OFFICERS**

SECTION 7.1. Designation and Removal. The Management Committee may designate employees of the Company as officers of the Company (the "Officers") as it deems necessary or desirable to carry on the business of the Company. The initial offices shall be President, Treasurer-Chief Financial Officer and Secretary. The initial officers are set forth on Schedule D (the "Initial Officers"). Any two or more offices may be held by the same Person. New offices may be created and filled by the Management Committee (and such offices shall be effective without any amendment to the Certificate of Formation). Each Officer shall hold office until the Officer's successor is designated by the Management Committee or until the Officer's earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Company and the Management Committee. Any Officer designated by the Management Committee may be removed by the Management Committee (excluding the Person being considered for removal) for cause or not for cause at any time, subject to the terms of such Officer's employment agreement with the Company, if any. A vacancy in any office occurring because of death, resignation, removal or otherwise may be filled by the Management Committee. Any designation of Officers, a description of any duties delegated to such Officers, and any removal of such Officers shall be approved by the Management Committee in writing, which shall be kept with the books and records of the Company. The Officers are not "managers" (with the meaning of the Act) of the Company. The Management Committee may delegate any or all of the power and authority delegated to the Management Committee to one or more of such Officers, subject to the right of the Management Committee to modify or withdraw any or all of any such delegation and, unless otherwise set forth in a written delegation of power and authority by the Management Committee, to the right of any member of the Management Committee to withdraw any or all of any such delegation by written notice to the Officer or Officers in question, which notice shall, upon receipt, have the same effect as a majority vote at a meeting of the Management Committee.

SECTION 7.2. <u>Delegation of Authority</u>. The Officers are hereby delegated the power and authority from the Management Committee to manage the day-to-day operations, business and activities of the Company, including, without limitation, the power and authority, in the name of and on behalf of the Company to: (i) incur and pay expenses of the Company in accordance with the Company's budget; (ii) effect distributions by the Company approved by the Management Committee; (iii) enter into contracts and other agreements for the use of Company assets and the provision of services by the Company and execute other instruments, documents or reports on behalf of the Company in connection therewith, in each case which (x) are

consistent with the purpose of the Company as approved by the Management Committee and (y) do not create or incur obligations of the Company which exceed the budget approved by the Management Committee; (iv) enter into such contracts, agreements and commitments with respect to the operation of the business of the Company as are consistent with the other provisions of this Agreement and the Act; and (v) act for and on behalf of the Company in all matters incidental to the foregoing and other day-to-day matters. The Initial Officers shall have the duties and responsibilities normally associated with such positions under the Delaware Corporation Act, unless otherwise specified by the Management Committee.

SECTION 7.3. <u>Third Party Reliance</u>. Any Person dealing with the Company, the Management Committee, an Officer or any Member may rely upon a certificate signed by an Officer as to: (i) the identity of the Officers, any Member or any Managers; (ii) any factual matters relevant to the affairs of the Company; (iii) the Persons who are authorized to execute and deliver any documents on behalf of the Company; or (iv) any action taken or omitted by the Company.

#### ARTICLE VIII.

## REPRESENTATIONS AND WARRANTIES

- SECTION 8.1. <u>Representations and Warranties of the Company</u>. The Company hereby makes each of the following representations and warranties to the Members and such warranties and representations shall survive the execution of this Agreement:
- (a) <u>Due Incorporation or Formation; Authorization of Agreement.</u> The Company is limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of formation and has the company power and authority to own its property and carry on the business as carried on at the date hereof and as contemplated hereby. The Company is duly licensed or qualified to do business or conduct such activities and is in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. The Company has the company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this Agreement has been duly authorized by all necessary company action. This Agreement constitutes the legal, valid, and binding obligation of such Member.
- (b) No Conflict With Restrictions; No Default. Neither the execution, delivery, and performance of this Agreement nor the consummation by the Company of the transactions contemplated hereby (i) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to the Company, (ii) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of this Agreement of the Company or of any material agreement or instrument to which the Company is a party or by which the Company is or may be bound or to which any of its material properties or assets is subject, (iii) will conflict with, violate, result in a

breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which the Company is a party or by which the Company is or may be bound, or (iv) will result in the creation or imposition of any lien upon any of the material properties or assets of the Company.

- (c) <u>Litigation</u>. There are no actions, suits, proceedings, or investigations pending or, to the knowledge of the Company or, threatened against or affecting the Company or any of its properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator that could, if adversely determined (or, in the case of an investigation could lead to any action, suit, or proceeding, that if adversely determined could) reasonably be expected to materially impair the Company's ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of the Company; and the Company has not received any currently effective notice of any default, and the Company is not in default, under any applicable order, writ, injunction, decree, permit, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator that could reasonably be expected to materially impair the Company's ability to perform its obligations under this Agreement or to have a material adverse effect on the consolidated financial condition of the Company.
- (d) <u>Governmental Authorizations</u>. Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any governmental or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by the Company under this Agreement or the consummation by the Company of any transaction contemplated hereby has been completed, made, or obtained on or before the Effective Date.
- SECTION 8.2. Representations and Warranties of Certain Members. Each of **[INSERT: founding non-Drexel Members]**, severally but not jointly, hereby makes each of the following representations and warranties to the other Members and the Company and such warranties and representations shall survive the execution of this Agreement:
- Member is a corporation duly organized or a partnership or limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership, or company power and authority to own its property and carry on the business or other scientific, charitable and educational activities as carried on at the date hereof and as contemplated hereby / an individual residing in [INSERT: state] and has all necessary authority to enter into this Agreement. Such Member is duly licensed or qualified to do business or conduct such activities and is in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder. Such Member has the corporate, partnership, or company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this

Agreement has been duly authorized by all necessary corporate, partnership, or company action. This Agreement constitutes the legal, valid, and binding obligation of such Member.

- No Conflict With Restrictions: No Default. Neither the execution. delivery, and performance of this Agreement nor the consummation by such Member of the transactions contemplated hereby (i) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Member, (ii) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement or operating agreement of such Member or of any material agreement or instrument to which such Member is a party or by which such Member is or may be bound or to which any of its material properties or assets is subject, (iii) will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which such Member is a party or by which such Member is or may be bound, or (iv) will result in the creation or imposition of any lien upon any of the material properties or assets of such Member.
- (c) <u>Governmental Authorizations</u>. Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any governmental or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by such Member under this Agreement or the consummation by such Member of any transaction contemplated hereby has been completed, made, or obtained on or before the Effective Date.
- (d) <u>Investment Company Act; Public Utility Holding Company Act</u>. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an interest therein be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. Neither such Member nor any of its Affiliates is, nor will the Company as a result of such Member holding an Interest therein be, a "holding company," "an affiliate of a holding company," or a "subsidiary of a holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.
- (e) <u>Investigation</u>. Such Member is acquiring its Units based upon its own investigation, and the exercise by such Member of its rights and the performance of its obligations under this Agreement will be based upon its own investigation, analysis, and expertise. Such Member's acquisition of its Units is being made for its own account for investment, and not with a view to the sale or distribution thereof. Such Member is a sophisticated investor possessing an expertise in analyzing the benefits and risks associated with acquiring investments that are similar to the acquisition of its Units.

#### ARTICLE IX.

#### ACCOUNTING, RECORDS AND TAX MATTERS

#### SECTION 9.1. Accounting, Books and Records.

- (a) The Company shall keep on site at its principal place of business each of the following:
- (i) Separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of the Business in accordance with this Agreement;
- (ii) A current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;
- (iii) A copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (iv) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;
  - (v) A copy of this Agreement.
- (vi) Copies of any writings permitted or required under Section 18-502 of the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution;
- (vii) Unless contained in this Agreement, a statement prepared and certified as accurate by the Management Committee of the Company that describes:
- (A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each Member and that each Member has agreed to contribute in the future;
- (B) The times at which or events on the happening of which any Additional Capital Contributions agreed to be made by each Member are to be made;
- (C) If agreed upon, the time at which or the events on the happening of which a Member may terminate his Units in the Company and the amount of, or the method of determining, the distribution to which he may be entitled respecting his Units and the terms and conditions of the termination and distribution; and
- (D) Any right of a Member to receive distributions, which include a return of all or any part of a Member's contribution; and

- (viii) Any written consents obtained from Members pursuant to Section 18-302 of the Act and Section 6.3 of this Agreement regarding action taken by Members without a meeting.
- (b) The Company shall use the accrual method of accounting in preparation of its financial reports and for tax purposes and shall keep its books and records accordingly. Any Member or its designated representative has the right to have reasonable access to and inspect and copy the contents of such books or records and shall also have reasonable access during normal business hours to such additional financial information, documents, and books and records of the Company.

#### SECTION 9.2. Reports.

- (a) <u>In General</u>. The chief financial officer of the Company shall be responsible for causing the preparation of financial reports of the Company and the coordination of financial matters of the Company with the Company's accountants.
- (b) Periodic and Other Reports. The Company shall cause to be delivered to each Member the financial statements listed in clauses (i) and (ii) below, prepared, in each case (other than with respect to Member's Capital Accounts, which shall be prepared in accordance with this Agreement) in accordance with [GAAP consistently applied] (and, if required by any Member or its Controlled Affiliates for purposes of reporting under the Securities Exchange Act of 1934, Regulation S-X), and such other reports as any Member may reasonably request from time to time, provided that, if the Management Committee so determines within thirty (30) days thereof, such other reports shall be provided at such requesting Member's sole cost and expense. The monthly and quarterly financial statements referred to in clause (ii) below may be subject to normal year-end audit adjustments.
- (i) As soon as practicable following the end of each Fiscal Year (and in any event not later than days after the end of such Fiscal Year) and at such time as distributions are made to the Members pursuant to Article XII hereof following the occurrence of a Dissolution Event, a balance sheet of the Company as of the end of such Fiscal Year and the related statements of operations, Members' Capital Accounts and changes therein, and cash flows for such Fiscal Year, together with appropriate notes to such financial statements and supporting schedules, all of which shall be audited and certified by the Company's accountants, and in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the immediately preceding Fiscal Year end (in the case of the statements).
- (ii) As soon as practicable following the end of each of the first three (3) Fiscal Quarters of each Fiscal Year (and in any event not later than sixty (60) days after the end of each such Fiscal Quarter), a balance sheet of the Company as of the end of such Fiscal Quarter and the related statements of operations and cash flows for such Fiscal Quarter and for the Fiscal Year to date, in each case, to the extent the Company was in existence, setting forth in comparative form the corresponding figures for the prior Fiscal Year's Fiscal Quarter and the

interim period corresponding to the Fiscal Quarter and the interim period just completed.

The quarterly or monthly statements described in clause (ii) above shall be accompanied by a written certification of the chief financial officer of the Company that such statements have been prepared in accordance with GAAP consistently applied or this Agreement, as the case may be.

#### SECTION 9.3. Tax Matters.

- Tax Elections. The Management Committee shall, without any further (a) consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to make the election provided for in Code Section 6231(a)(1)(B)(ii); (ii) to adjust the basis of Property pursuant to Code Sections 754, 734(b), and 743(b), or comparable provisions of state, local, or foreign law, in connection with Transfers of Units and Company distributions; (iii) with the consent of all of the Members, to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local, or foreign tax returns; and (iv) to the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state, local, or foreign law, to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. [INSERT: Name of Member that is to act as Tax Matters Member] is specifically authorized to act as the "Tax Matters Member" under the Code and in any similar capacity under state or local law.
- (b) <u>Tax Information</u>. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Fiscal Year of the Company but not later than five (5) months after the end of each Fiscal Year.
- (c) <u>Tax Status</u>. Notwithstanding anything in this Agreement to the contrary, solely for federal income tax purposes, each of the Members hereby recognizes that the Company will be subject to all provisions of Subchapter K of the Code; provided that the filing of all required returns thereunder shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.
- (d) <u>Liquidation Safe Harbor</u>. Each Member, by executing this Agreement, hereby agrees that the Tax Matters Partner is authorized and directed to elect the safe harbor on behalf of the Company, in accordance with the proposed Treasury Regulations Section 1.83-3(1) and the proposed revenue procedure thereunder (once such regulations and revenue procedure become effective), under which the fair market value of each Profits Interest shall be treated as being equal to the liquidation value of that interest (the "Safe Harbor Election"). Further, the Company and each Member (including any person to whom an interest in the Company is transferred in connection with the performance of services) agree to comply with all requirements of the Safe Harbor Election with respect to all interest in the Company transferred

in connection with the performance of services while the Safe Harbor Election remains effective, including the requirement that all relevant Federal income tax items be reported consistently with the Safe Harbor Election, and take all other actions, if any required to comply with the requirements of such Safe Harbor Election as ultimately promulgated, to the extent practicable.

#### ARTICLE X.

#### **AMENDMENTS**

#### SECTION 10.1. Amendments.

- (a) Amendments to this Agreement may be proposed by any Manager or any Member. Following such proposal, the Management Committee shall submit to the Members a verbatim statement of any proposed amendment, provided that counsel for the Company shall have approved of the same in writing as to form, and the Management Committee shall include in any such submission a recommendation as to the proposed amendment. The Management Committee shall seek the written vote of the Members on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives the affirmative vote of \_\_\_\_\_\_ percent (\_\_\_\_\_\_%) the Members, provided that any amendment that adversely and disproportionally affects any Member shall require the consent of such Member to be effective.
- (b) Notwithstanding Section 10.1(a) hereof, the Board of Managers may make ministerial amendments to this Agreement to comply with any law or regulation or to facilitate any tax election, provided that no amendment so affected (i) shall adversely affect any Member disproportionately, (ii) modify the limited liability of a Member or (ii) alter the interest of a Member in Profits, Losses, other items, or any Company distributions.

#### ARTICLE XI.

#### **TRANSFERS**

SECTION 11.1. <u>Restrictions on Transfers</u>. Until Company's securities are the subject of a Qualified Initial Public Offering, or unless expressly permitted under this Agreement, no Member will Transfer a legal or beneficial interest in any Units now or hereafter owned by such Member, whether of record or beneficially.

SECTION 11.2. Permitted Transfers. The provisions of this Article XI will not apply to the following Transfers of Units by the Members: (a) Transfers by a Member to his or her spouse, parents, siblings, children, nieces, nephews, grandchildren (with respect to each Member, collectively, "Family Members"), trusts for the benefit of one or more Family Members or entities controlled by such Member or one or more Family Members; (b) Transfers from the estate of a deceased Member to a Family Member or to a trust for the benefit of a Family Member; (c) Transfers by a Member to an Affiliate, which will include, as to a limited partnership, the general partners or limited partners of such partnership; (d) Transfers to

employees or to employee stock ownership trusts; (e) Transfers by Drexel to an employee of or former employee of Drexel in connection with Drexel's internal patent policy, or to an institution that is a party to an inter-institutional agreement with Drexel in connection with the technology licensed in the License Agreement; and (f) Transfers by a Member to Company in a transaction or under a contractual commitment that has been, in either case, approved by the Company's Management Committee.

#### SECTION 11.3. Offer to Sell Units; Options to Purchase.

- (a) Notice. Except as otherwise provided in this Agreement, if a Member desires to transfer any Units to a third party (the "Offeror"), whether or not the Offeror is a Member, such Member (the "First Selling Member") will deliver a written notice (the "Primary Sale Notice") to Company with respect to the proposed sale of such Units (the "Offered Units") stating in reasonable detail, the number of Units to be transferred, the identity of the prospective purchaser(s) and the terms and conditions of the proposed sale. Within five (5) days of Company's receipt of the Primary Sale Notice, Company will transmit a copy of the Primary Sale Notice to all Members other than the First Selling Member (collectively, the "Offeree Members"). Transmittal of the Primary Sale Notice to Company will constitute an offer by the First Selling Member to sell the Offered Units to both Company and the Offeree Members in accordance with this Article XI.
- (b) Option of Company. Within ten (10) days of Company's receipt of the Primary Sale Notice (the "Company Option Period"), Company may elect to purchase all but not less than all of the Offered Units, upon the same terms and conditions set forth in the Primary Sale Notice. During the Company Option Period, Company will transmit notice of such election to the First Selling Member (the "Company Option Notice"), with a copy to each of the Offeree Members, specifying whether Company is accepting or rejecting the offer. If Company accepts the offer, then Company and the First Selling Member will effect the sale in accordance with Section 11.5, and the provisions of Sections 11.3(c) (f) will not apply to such offer. If Company fails to submit a Company Option Notice within the Company Option Period, then Company will forfeit the option to purchase Units in connection with the applicable Primary Sale Notice.
- Offered Units, then within twenty-five (25) days of an Offeree Member's receipt of the Primary Sale Notice (the "Offeree Option Period"), such Offeree Member may request either to purchase Units in an amount not to exceed the number of Offered Units (the "Offered Amount") or to sell Units in an amount not to exceed the Offered Amount. The Offeree Members desiring to purchase the Offered Units (collectively, the "Purchasing Members") will each submit, within the Offeree Option Period, written notice to Company disclosing the number of Units proposed to be purchased by such Purchasing Member (each, a "Purchase Notice"). The Offeree Members desiring to sell Units (collectively, with the First Selling Member, the "Selling Members") will each submit, within the Offeree Option Period, written notice to Company disclosing the number of Units owned by and proposed to be sold by such Selling Member (each, a "Secondary Sale Notice"). A Purchasing Member or Selling Member shall also indicate on the Purchase Notice or Secondary Sale Notice the total number of Units owned by such Purchasing Member or Selling

Member. If an Offeree Member fails to submit a Purchase Notice or a Secondary Sale Notice, then such Member will forfeit the option to purchase or sell Units in connection with the applicable Primary Sale Notice.

- (d) Purchase Pool. If the aggregate number of Units requested to be purchased by all Purchasing Members (the "Purchase Pool") is less than or equal to the Offered Amount, then each Purchasing Member will purchase the number of Units indicated on such Purchasing Member's Purchase Notice, and the First Selling Member will sell such number of Units to each such Purchasing Member. If the Purchase Pool is greater than the Offered Amount, then each Purchasing Member will purchase Units as follows, unless an alternate allocation of Units is agreed upon in writing by all of the Purchasing Members: first, (i) each Purchasing Member will purchase from the First Selling Member such number of Units equal to the Offered Amount multiplied by a fraction, the numerator of which is the number of Units owned by such Purchasing Member and the denominator of which is the aggregate number of Units owned by all Purchasing Members; provided that the aggregate number of Units that each Purchasing Member will purchase will not exceed the number of Units indicated on the Purchase Notice of such Purchasing Member; and second, (ii) if there are any remaining Units in the Purchase Pool, then each remaining Purchasing Member will, in addition, purchase from the First Selling Member that proportionate part of the then remaining Purchase Pool that the number of Units owned by such Purchasing Member bears to the aggregate number of Units owned by all remaining Purchasing Members.
- Sale Pool. If the aggregate number of Units requested to be sold by all Selling Members, including, as to the First Selling Member, only those Offered Units of the First Selling Member that are not committed to be sold under Section 11.3(d) (the "Sale Pool"), is less than or equal to the Offered Amount, then each such Selling Member will sell the number of Units indicated on such Selling Member's Secondary Sale Notice, and the Offeror will be entitled to purchase such number of Units from such Selling Member. If the Sale Pool is greater than the Offered Amount, then each Selling Member will sell Units (including, as to the First Selling Member, only those Offered Units of the First Selling Member that are not committed to be sold under Section 11.3(d)) as follows, unless an alternate allocation of Units is agreed upon in writing by all of the Selling Members: first, (i) each Selling Member will sell to the Offeror such number of Units equal to the Offered Amount multiplied by a fraction, the numerator of which is the number of Units owned by such Selling Member and the denominator of which is the aggregate number of Units owned by all Selling Members; provided that the aggregate number of Units that each Selling Member is entitled to sell shall not exceed the number of Units indicated on the Secondary Sale Notice of such Selling Member (or, in the case of the First Selling Member, the Offered Units that are not committed to be sold under Section 11.3(d); and second, (ii) if there are any remaining Units in the Sale Pool, then each remaining Selling Member will, in addition, sell to the Offeror that proportionate part of the then remaining Sale Pool that the number of Units owned by such Selling Member bears to the aggregate number of Units owned by all remaining Selling Members.
- (f) <u>Allocation Notice and Closing</u>. Within five (5) days after the expiration of the Offeree Option Period, Company will transmit notice (the "*Allocation Notice*") to each Purchasing Member and Selling Member who has elected to buy or sell Units and to the Offeror

specifying the allocation of Units determined in accordance with this Article XI. Each participating Purchasing Member and Selling Member and the Offeror will effect the sale in accordance with Section 11.5.

(g) <u>Conversion Assumed</u>. In calculating the number of Units owned by a Purchasing Member or by a Selling Member, a conversion will be assumed for all equity interests that are convertible into the class of Units being purchased or sold.

#### SECTION 11.4. Drag-Along Right.

- (a) Notwithstanding anything to the contrary contained in this Agreement, if at any time, and from time to time, a bona fide written offer to acquire the Company, whether by merger, stock sale or sale of assets (the "Drag-Along Offer"), is made by a third party to Company or to the holders of at least \_\_\_% of the then outstanding Units (the "Controlling Members") and Company or the Controlling Members wish to accept the Drag-Along Offer, then Company or the Controlling Members, as the case may be, will have the right (the "Drag-Along Right") to require the other Members (including Drexel, the "Minority Members") to sell their Units to the third-party proposed purchaser(s) at the same price per unit and upon the same terms and conditions as set forth in the Drag-Along Offer. Each Member will take all reasonable actions requested by the Controlling Members to facilitate the exercise of the Drag-Along Right, including, but not limited to, voting to approve the transaction.
- (b) To exercise a Drag-Along Right, Company or the Controlling Members will deliver to each Minority Member a written notice (a "*Drag-Along Notice*") containing (a) the name and address of the third-party proposed purchaser(s), (b) the proposed price per unit, terms of payment and other material terms and conditions of the Drag-Along Offer and (c) all such other documents, instruments and information as may be required to enable the Members to effectuate the transfer of their Units. Within thirty (30) days from their receipt of the Drag-Along Notice, the Minority Members will take such actions as are necessary to transfer their Units to the third-party proposed purchaser(s).
- SECTION 11.5 Purchase Price, Terms and Settlement. For each closing pursuant to Sections 11.3(f) or 11.4, the purchase price per Unit and the terms of payment will be as set forth in the Primary Sale Notice or the Drag-Along Offer, as applicable. Settlement for the purchase of Units by Company and by Members (including Drexel) under Section 11.3(f) and by the Offeror or third-party proposed purchaser(s) under Sections 11.3(f) or 11.4 will be made within thirty (30) days following the later of (i) exercise of the last option exercised or (ii) expiration of any Notice applicable under such Articles. All settlements for the purchase and sale of Units, unless otherwise agreed to by all of the purchasers and sellers, will be held at the principal executive offices of Company during regular business hours. The precise date and hour of settlement will be fixed within the time limits prescribed in this Agreement by the purchaser or purchasers giving written notice to each seller, or if the purchasers fail to agree, by the President of Company giving written notice to the purchasers and each seller. Notice by the purchaser or purchasers, or by the President of Company, as the case may be, must be given at least five (5) days in advance of the settlement date specified. At settlement, each seller will deliver to the applicable purchaser(s) instruments of conveyance with respect to the Units, free

and clear of all liens, claims, restrictions and encumbrances, except for the terms of this Agreement.

#### ARTICLE XII.

#### DREXEL PUT AND PREEMPTIVE RIGHTS

#### SECTION 12.1. Redemption of Shares.

- From and after the occurrence of a Trigger Event (as defined below) and (a) subject to the limitations set forth in this Section 12.1(a), Drexel may require the Company to purchase all or such portion of the Units held by Drexel (the "Redeemed Units") as Drexel may specify ("Redemption Rights") at the per Unit price set forth below. Drexel may exercise its Redemption Rights by providing written notice (the "Redemption Notice") of Drexel's desire to do so to the Company. The term "*Redemption Price*" means the higher of (a) Dollars (\$ ) per Unit of the Company's Units, subject to equitable adjustment after the Effective Date, or (b) the fair market value per unit of the Company's Units as of the date the Redemption Notice is received by the Company as determined by an Appraisal (as defined in Exhibit E) pursuant to the procedures set forth in Exhibit E. The term "Trigger Event" means the occurrence of any of the following: (i) a material default by the Company under either the Securities Purchase Agreement attached as Exhibit B or this Agreement, which default is not cured during any specified cure periods; (ii) the Company (A) becomes insolvent, bankrupt or generally fails to pay its debts as such debts become due, (B) is adjudicated insolvent or bankrupt, (C) admits in writing its inability to pay its debts, (D) suffers the appointment of a custodian, receiver or trustee for it or substantially all of its property to be appointed and, if appointed without its consent, not discharged within thirty (30) days, (E) makes an assignment for the benefit of creditors or (F) suffers proceedings under any law related to bankruptcy, insolvency, liquidation or the reorganization, readjustment or the release of debtors to be instituted against it and, if contested by it, not dismissed or stayed within ten (10) days; (iii) any proceeding under any law related to bankruptcy, insolvency, liquidation, or the reorganization, readjustment or release of debtors is instituted or commenced by the Company; (iv) the entering of any order for relief relating to any of the proceedings described in Sections 12.1(a)(ii) or (iii) above; (v) the calling by the Company of a meeting of its creditors with a view to arranging a workout or adjustment of its debts; (vi) the act or failure to act by the Company indicating its consent to, approval of or acquiescence in any of the proceedings described in Sections 12.1(a)(ii)-(v) above; or (vii) the anniversary of the Effective Date. Drexel acknowledges that the Redemption Rights will not restrict the Company from granting other redemption rights in favor of future investors in the Company.
- (b) At a closing, in exchange for the Redeemed Units, the Company will make payment to Drexel of an amount equal to the Redemption Price multiplied by the number of Redeemed Units (the "Aggregate Redemption Amount") then being redeemed by Drexel. If the Trigger Event is caused by an occurrence described in Sections 12.1(a)(i)-(vi), then all Redeemed Units pursuant to Section 12.1(a) will be transferred, and the Aggregate Redemption Amount for such Redeemed Units will be paid, at a closing to be held within thirty (30) days of the date the Company received the Redemption Notice, or in the case of an Appraisal, within

fifteen (15) days after a final Appraisal has been delivered to the Company and Drexel as set forth in Exhibit E. If the Trigger Event is caused by an occurrence described in Section 12.1(a)(vii) then all Redeemed Units pursuant to Section 12.1(a) will be transferred, and the Aggregate Redemption Amount for such Redeemed Units will be paid, in two (2) equal installments at two (2) consecutive annual closings. The first such closing will be held within thirty (30) days of the date the Company received the Redemption Notice, or in the case of an Appraisal, within fifteen (15) days after a final Appraisal has been delivered to the Company and Drexel as set forth in Exhibit E, and the second such closing will be held on the same date the following year. All payments of the Aggregate Redemption Amount will be by certified bank check or wire transfer of same day funds and will not be deemed made until received by Drexel.

SECTION 12.2. Preemptive Rights. If Company proposes to issue, sell or exchange any additional Units or other interests in the Company ("Offered Units"), then the Company will first deliver to Drexel a written offer to sell ("Offer") the Offered Units to Drexel. The Offer will specify the price and the terms and conditions of the sale and shall be irrevocable for a period of fifteen (15) days from the date the Offer is given to Drexel (the "Offer Period"). Drexel, its assignee(s) or its designee(s) will have the right to purchase up to such number of units, as will cause Drexel and its assignee(s) or designee(s) to own collectively Units representing at least percent (%) of the outstanding units of the Company on a fully diluted basis, assuming the exercise, conversion and exchange of all outstanding securities of the Company for or into units. Drexel, its assignee(s) or its designee(s) may exercise such right to purchase any portion of Offered Units by giving written notice to the Company within the Offer Period setting forth the percentage of the Offered Units that Drexel, its assignee(s) or its designee(s) elects to purchase ("Notice of Acceptance"). If at the end of the Offer Period, Drexel, its assignee(s) and/or its designee(s) elects to purchase less than all of the Offered Units, then the Company may issue, sell or exchange those Offered Units for which no Notice of Acceptance was received. However, such issuance, sale or exchange must be on the same terms and conditions as the Offer. No additional Units of the Company shall be issued, sold or exchanged, offered for sale or exchange, or reserved or set aside for issuance unless and until the Company has complied with the requirements of this Section 12.2.

#### ARTICLE XIII.

## DISSOLUTION AND WINDING UP

- SECTION 13.1. <u>Dissolution Events</u>. The Company shall dissolve and shall commence winding up and liquidating upon the first to occur of any of the following (each, a "Dissolution Event"):
- (i) The unanimous vote of the Members to dissolve, wind up, and liquidate the Company;
- (ii) A judicial determination that an event has occurred that makes it unlawful, impossible, or impractical to carry on the Business; or
  - (iii) The Bankruptcy, dissolution, retirement, resignation, or expulsion

of any Member, provided that any such event will not be deemed a Dissolution Event in the event that there are at least two remaining Members and each remaining Member agrees to continue the business of the Company within ninety (90) days after the occurrence of such an event.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

- SECTION 13.2. Winding Up. Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs, provided that all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon the Members until such time as the Property has been distributed pursuant to this Section 13.2 and the Certificate has been canceled pursuant to the Act. The Management Committee shall appoint a Liquidator that shall be responsible for overseeing the winding up and dissolution of the Company, which winding up and dissolution shall be completed within ninety (90) days of the occurrence of the Dissolution Event. The Liquidator shall take full account of the Company's liabilities and Property and shall cause the Property or the proceeds from the sale thereof (as determined pursuant to Section 13.9 hereof), to the extent sufficient therefor, to be applied and distributed, to the maximum extent permitted by law, in the following order:
- (a) First, to creditors (including Members and Managers who are creditors, to the extent otherwise permitted by law) in satisfaction of all of the Company's Debts and other liabilities (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made and liabilities for distribution to members under Section 18-601 or Section 18-604 of the Act;
- (b) Second, except as provided in this Agreement, to Members and former Members of the Company in satisfaction of liabilities for distribution under Section 18-601 or Section 18-604 of the Act; and
- (c) The balance, if any, to the Members in accordance with the positive balance in their Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods.

No Member or Manager shall receive additional compensation for any services performed pursuant to this Article XIII.

SECTION 13.3. Compliance With Certain Requirements of Regulations; Deficit Capital Accounts. In the event the Company is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article XII to the Members who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations for all Allocation Years, including the

Allocation Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Article XIII may be:

- (i) Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 13.2 hereof; or
- (ii) Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.
- SECTION 13.4. <u>Deemed Contribution and Distribution</u>. In the event the Company is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Dissolution Event has occurred, the Property shall not be liquidated, the Company's Debts and other liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed all Property and liabilities to a new limited liability company in exchange for an interest in such new limited liability company and, immediately thereafter, the Company will be deemed to liquidate by distributing interests in the new limited partnership to the Members.
- SECTION 13.5. <u>Rights of Members</u>. Except as otherwise provided in this Agreement, each Member shall look solely to the Property of the Company for the return of its Capital Contribution and has no right or power to demand or receive Property other than cash from the Company. If the assets of the Company remaining after payment or discharge of the debts or liabilities of the Company are insufficient to return such Capital Contribution, then the Members shall have no recourse against the Company or any other Member or Manager.

#### SECTION 13.6. Notice of Dissolution/Termination.

- (a) In the event a Dissolution Event occurs or an event occurs that would, but for provisions of Section 13.1, result in a dissolution of the Company, the Management Committee shall, within thirty (30) days thereafter, provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Management Committee) and shall publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the discretion of the Management Committee).
- (b) Upon completion of the distribution of the Company's Property as provided in this Article XII, the Company shall be terminated, and the Liquidator shall cause the

filing of the Certificate of Cancellation pursuant to Section 18-203 of the Act and shall take all such other actions as may be necessary to terminate the Company.

SECTION 13.7. The Liquidator. The Company is authorized to pay a reasonable fee to the Liquidator for its services performed pursuant to this Article XIII and to reimburse the Liquidator for its reasonable costs and expenses incurred in performing those services. The Company shall indemnify, save harmless, and pay all judgments and claims against such Liquidator or any officers, directors, agents, or employees of the Liquidator relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidator, or any officers, directors, agents, or employees of the Liquidator in connection with the liquidation of the Company, including reasonable attorneys' fees incurred by the Liquidator, officer, director, agent, or employee in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, except to the extent such liability or damage is caused by the fraud, intentional misconduct of, or a knowing violation of law by the Liquidator that was material to the cause of action.

SECTION 13.8. Form of Liquidating Distributions. For purposes of making distributions required by Section 13.2 hereof, the Liquidator may determine whether to distribute all or any portion of the Property in-kind or to sell all or any portion of the Property and distribute the proceeds therefrom.

# ARTICLE XIV.

# MISCELLANEOUS

SECTION 14.1. Notices. Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed or (ii) when the same is actually received, if sent either by registered or certified mail, postage and charges prepaid, or by facsimile, if such facsimile is followed by a hard copy of the facsimile communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, addressed as follows, or to such other address as such Person may from time to time specify by notice to the Members and Managers:

- (a) If to the Company, to the address determined pursuant to Section 1.4 hereof;
  - (b) If to the Managers, to the address set forth in Exhibit D hereto; or
  - (c) If to a Member, to the address set forth in Exhibit A hereof.

SECTION 14.2. <u>Binding Effect</u>. Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, transferees, and assigns.

SECTION 14.3. <u>Construction</u>. Every covenant, term, and provision of this {PAGE }

Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member.

- SECTION 14.4. <u>Time</u>. In computing any period of time pursuant to this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- SECTION 14.5. <u>Headings</u>. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
- SECTION 14.6. Severability. Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this Section 14.6 shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Member to lose the material benefit of its economic bargain.
- SECTION 14.7. <u>Incorporation by Reference</u>. Every exhibit, schedule, and other appendix attached to this Agreement and referred to herein is not incorporated in this Agreement by reference unless this Agreement expressly otherwise provides.
- SECTION 14.8. <u>Variation of Terms</u>. All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.
- SECTION 14.9. <u>Dispute Resolution and Governing Law.</u> This Agreement shall be governed by and interpreted under the laws of the State of Delaware, without giving effect to the principles of conflicts of law of any jurisdiction. The parties will use reasonable efforts to resolve amicably any disputes that may relate to or arise under this Agreement. If the parties are unable to resolve amicably a dispute, then the parties hereby submit to the exclusive jurisdiction of and venue in the state and federal courts located in the District of Delaware with respect to any and all disputes concerning the subject, or arising out, of this Agreement.
- SECTION 14.10. <u>Waiver of Jury Trial</u>. Each of the Members irrevocably waives to the extent permitted by law, all rights to trial by jury and all rights to immunity by sovereignty or otherwise in any action, proceeding, or counterclaim arising out of or relating to this Agreement.
- SECTION 14.11. Specific Performance. Each Member agrees with the other Members that the other Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the nonbreaching Members may be entitled, at law or in equity, the

nonbreaching Members shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

SECTION 14.13. Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

**IN WITNESS WHEREOF**, the parties have executed and entered into this Agreement of the Company as of the day first above set forth.

[MEMBER]	[MEMBER]
By: Name: Title:	Name:
[MEMBER]	Drexel University
By:Name:Title:	Name:
Q.E.	

# EXHIBIT A

# MEMBERS, CAPITAL CONTRIBUTIONS, AND UNITS

MEMBER and Address	INITIAL CAPITAL CONTRIBUTION (Gross Asset Value)	UNITS	CURRENT PERCENTAGE INTEREST
DREXEL UNIVERSITY  Drexel University Entrepreneurship & Technology Commercialization Office 3225 Arch Street, Ground Floor Philadelphia, PA 19104 Attn: Executive Director			

Terms and Conditions of any Capital Contributions:

[TO BE ADDED AS NEEDED]

#### **EXHIBIT B**

#### SECURITIES PURCHASE AGREEMENT

[TO BE ATTACHED]

OREXEL UNIVERSITY

## EXHIBIT C

### **DEFINITIONS**

"Act" means the Delaware Limited Liability Company Act, 6 Delaware Code Sections 18-101 et seq., as amended from time to time (or any corresponding provisions of succeeding law).

"Additional Capital Contributions" means, with respect to each Member, the Capital Contributions made by such Member pursuant to Section 2.3 hereof. In the event Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Additional Capital Contributions of the transferror to the extent they relate to the Transferred Units.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments:

- (i) Credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentences in Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- (ii) Debit to such Capital Account the items described in Regulations Sections  $1.704-1(b)(2)(ii)(\underline{d})(\underline{4}), 1.704-1(b)(2)(ii)(\underline{d})(\underline{5}), \text{ and } 1.704-1(b)(2)(ii)(\underline{d})(\underline{6}).$

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulations Section  $1.704-1(b)(2)(ii)(\underline{d})$  and shall be interpreted consistently therewith.

"Adverse Act" means, with respect to any Member, any of the following:

- (i) A failure of such Member to make any Capital Contribution required pursuant to any provision of this Agreement;
- (ii) A determination that such Member has committed a material breach of any material covenant contained in this Agreement or materially defaulted on any material obligation provided for in this Agreement and such breach or default continues for thirty (30) days after the date written notice thereof has been given to such Member by any other Member, provided that, if such breach or default is not a failure to pay money and is of such a nature that it cannot reasonably be cured within such thirty (30) day period, but is curable and such Member in good faith begins efforts to cure it within such thirty (30) day period and continues diligently to do so, such Member shall have a reasonable additional period thereafter to effect the cure (which shall not exceed an additional ninety (90) days unless otherwise approved by the Management Committee), and provided further that, if within thirty (30) days after written notice of such breach or default has been given to such Member, such Member delivers written notice (the "Contest Notice") to each other Member that it contests such notice of breach or default, such breach or default shall not constitute an

Adverse Act unless and until (and assuming that such breach or default has not theretofore been cured in full and that any applicable grace period has expired) there is a Final Determination that such Member's actions or failures to act constituted such a breach or default;

- (iii)A Transfer of all or any portion of such Member's Interest except as expressly permitted or required by this Agreement;
- (iv)Any dissolution or liquidation of a Member or the taking of any action by its directors, majority stockholder, or Affiliate looking to the dissolution or liquidation of such Member, unless substantially all assets of the Member are transferred or are to be transferred to a wholly owned Affiliate of such Member; or
- (v) The Bankruptcy of such Member or the occurrence of any other event that would permit a trustee or receiver to acquire control of the affairs or assets of such Member.

An "Adverse Member" is any Member with respect to whom an Adverse Act has occurred.

"Affiliate" means, with respect to any Person (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any officer, director, general partner, member or trustee of such Person, or (iii) any Person who is an officer, director, general partner, member or trustee of any Person described in clauses (i) or (ii) of this sentence. For purposes of this definition, the terms "controlling," "controlled by," or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through the ownership of voting securities, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, general partners, or persons exercising similar authority with respect to such Person or entities.

"Aggregate Redemption Amount" has the meaning set forth in Section 12.2 hereof.

"Agreement" or "Agreement" means this Agreement of [INSERT: name of Company] LLC, including all Exhibits and Schedules attached hereto, as amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires. All references in this Agreement to "Section" or "Sections" are to a section or sections of this Agreement unless otherwise specified.

"Allocation Notice" has the meaning set forth in Section 11.3(f) hereof.

"Allocation Year" means (i) the period commencing on the Effective Date and ending on December 31, 20, (ii) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate Profits, Losses, and other items of Company income, gain, loss, or deduction pursuant to Article III hereof.

"Appraisal" has the meaning set forth in Exhibit E hereof.

"Appraiser" has the meaning set forth in Exhibit E hereof.

"Bankruptcy" means, with respect to any Person, a "Voluntary Bankruptcy" or an "Involuntary Bankruptcy." A "Voluntary Bankruptcy" means, with respect to any Person (i) the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors, (ii) the filing of any petition or answer by such Person seeking to adjudicate itself as bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to, or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official for such Person or for any substantial part of its Property, or (iii) corporate action taken by such Person to authorize any of the actions set forth above. An "Involuntary Bankruptcy" means, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other similar relief under any present or future bankruptcy, insolvency, or similar statute, law, or regulation, or the filing of any such petition against such Person, which petition shall not be dismissed within ninety (90) days, or without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the Property of such Person, which order shall not be dismissed within ninety (90) days.

"Business" means the business of operating, managing, licensing, franchising and/or developing [INSERT: description of nature of Company's business].

"Business Day" means a day of the year on which banks are not required or authorized to close in Philadelphia, Pennsylvania.

"Capital Account" means, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

- (i) To each Member's Capital Account there shall be credited (A) such Member's Capital Contributions, (B) such Member's distributive share of Profits and any items in the nature of income or gain that are specially allocated pursuant to Section 3.3 or Section 3.4 hereof, and (C) the amount of any Company liabilities assumed by such Member or that are secured by any Property distributed to such Member. The principal amount of a promissory note that is not readily traded on an established securities market and that is contributed to the Company by the maker of the note (or a Member related to the maker of the note within the meaning of Regulations Section 1.704-1(b)(2)(ii)(c)) shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2);
  - (ii) To each Member's Capital Account there shall be debited (A) the amount

of money and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, (B) such Member's distributive share of Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 3.3 or Section 3.4 hereof, and (C) the amount of any liabilities of such Member assumed by the Company or that are secured by any Property contributed by such Member to the Company;

(iii)In the event Units are Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Units; and

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

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Management Committee shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any Members), the Management Committee may make such modification, provided that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Article XIII hereof upon the dissolution of the Company. The Management Committee also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Contributions" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed to the Company with respect to the Units in the Company held or purchased by such Member, including Additional Capital Contributions.

"Certificate" means the certificate of formation filed with the Secretary of State of the State of Delaware pursuant to the Act to form the Company, as originally executed and amended, modified, supplemented, or restated from time to time, as the context requires.

"Certificate of Cancellation" means a certificate filed in accordance with 6 Delaware Code Section 18-203.

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

"Company" means the limited liability company formed pursuant to this Agreement and the Certificate and the limited liability company continuing the business of this

Company in the event of dissolution of the Company as herein provided.

"Company Minimum Gain" has the same meaning as the term "partnership minimum gain" in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"Company Option Notice" has the meaning set forth in Section 11.3(b) hereof.

"Company Option Period" has the meaning set forth in Section 11.3(b) hereof.

"Contest Notice" has the meaning set forth in clause (ii) of the definition of "Adverse Act."

"Controlling Members" has the meaning set forth in Section 11.4(a) hereof.

"Damages" has the meaning set forth in Section 14.10 hereof.

"Debt" means (i) any indebtedness for borrowed money or the deferred purchase price of property as evidenced by a note, bonds, or other instruments, (ii) obligations as lessee under capital leases, (iii) obligations secured by any mortgage, pledge, security interest, encumbrance, lien, or charge of any kind existing on any asset owned or held by the Company whether or not the Company has assumed or become liable for the obligations secured thereby, (iv) any obligation under any interest rate swap agreement, (v) accounts payable, and (vi) obligations under direct or indirect guarantees of (including obligations (contingent or otherwise) to assure a creditor against loss in respect of) indebtedness or obligations of the kinds referred to in clauses (i), (ii), (iii), (iv), and (v) above, provided that Debt shall not include obligations in respect of any accounts payable that are incurred in the ordinary course of the Company's business and are not delinquent or are being contested in good faith by appropriate proceedings.

"Depreciation" means, for each allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis, provided that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Management Committee.

"Dissolution Event" has the meaning set forth in Section 12.1 hereof.

"Drag-Along Notice" has the meaning set forth in Section 11.4(b) hereof.

"Drag-Along Offer" has the meaning set forth in Section 11.4(a) hereof.

"Drag-Along Right" has the meaning set forth in Section 11.4(a) hereof.

"Effective Date" means the date first written above.

"Family Members" has the meaning set forth in Section 11.2 hereof.

*"Final Determination*" means (i) a determination set forth in a binding settlement agreement between the Company and the Member alleged to have committed an Adverse Act, which settlement agreement has been approved by the Management Committee, or (ii) a final judicial determination, not subject to further appeal, by a court of competent jurisdiction.

"Firm Offer" has the meaning set forth in Section 10.4(b) hereof.

"First Selling Member" has the meaning set forth in Section 11.3(a) hereof.

"Fiscal Quarter" means (i) the period commencing on the Effective Date and ending on [INSERT: last day of the fiscal quarter during which the Effective Date occurs], (ii) any subsequent three-month period commencing on each of January 1, April 1, July 1, and October 1, and ending on the last date before the next such date, and (iii) the period commencing on the immediately preceding January 1, April 1, July 1, or October 1, as the case may be, and ending on the date on which all Property is distributed to the Members pursuant to Article XI hereof.

"Fiscal Year" means (i) the period commencing on the Effective Date and ending on [INSERT: day after the last day of the Company's taxable year], (ii) any subsequent twelve-month period commencing on [INSERT: day after the last day of the Company's taxable year] and ending on [INSERT: last day of the Company's taxable year], and (iii) the period commencing on the immediately preceding [INSERT: day after the last day of the Company's taxable year] and ending on the date on which all Property is distributed to the Members pursuant to Article XIII hereof.

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

"Gross Asset Value" means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

- (i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Management Committee, provided that the initial Gross Asset Values of the assets contributed to the Company pursuant to Section 2.1 hereof shall be as set forth in such section;
- (ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account), as determined by the Management Committee, as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member of

more than a de minimis amount of Company property as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (D) in connection with the grant of a Profits Interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a partner capacity in anticipation of being a Member; provided that an adjustment described in clauses (A), (B), and (D) of this paragraph shall be made only if the Management Committee reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii)The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Management Committee; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to (A) Regulations Section 1.704-1(b)(2)(iv)(m) and (B) subparagraph (vi) of the definition of "*Profits*" and "*Losses*" or Section 3.3(g) hereof, provided that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

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

"Involuntary Bankruptcy" has the meaning set forth in the definition of "Bankruptcy."

"Issuance Items" has the meaning set forth in Section 3.3(h) hereof.

"License Agreement" means that agreement between Drexel and the Company dated \_\_\_\_\_, 20\_\_ providing for the license of the [INSERT: description of intellectual property].

"Liquidation Period" has the meaning set forth in Section 12.7 hereof.

"Liquidator" has the meaning set forth in Section 12.9(a) hereof.

"Liquidation Value Safe Harbor" has the meaning set forth in Section 8.3(d)

hereof.

"Losses" has the meaning set forth in the definition of "Profits" and "Losses."

- "Manager" means any of the individuals elected by the Members to serve on the Management Committee and "Managers" means all of such individuals.
  - "Management Committee" has the meaning set forth in Section 5.1(a) hereof.
- "Member" means any Person (i) who is referred to as such on Exhibit A to this Agreement, or who has become a substituted Member pursuant to the terms of this Agreement, and (ii) who has not ceased to be a Member. "Members" mean all such Persons.
- "Member Nonrecourse Debt" has the same meaning as the term "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).
- "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).
- *"Member Nonrecourse Deductions"* has the same meaning as the term "partner nonrecourse deductions" in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).
  - "Minority Members" has the meaning set forth in Section 11.4(a) hereof.
- "Net Cash Flow" means the gross cash proceeds of the Company less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies, all as determined by the Management Committee. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this definition.
- "Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).
- "Nonrecourse Liability" has the meaning set forth in Regulations Section 1.704-2(b)(3).
  - "Notice of Acceptance" has the meaning set forth in Section 12.3 hereof.
  - "Offer" has the meaning set forth in Section 12.3 hereof.
  - "Offer Period" has the meaning set forth in Section 12.3 hereof.
  - "Offered Amount" has the meaning set forth in Section 11.3(c) hereof.
  - "Offered Shares" has the meaning set forth in Section 12.3 hereof.
  - "Offered Units" has the meaning set forth in Section 11.3(a) hereof.

- "Offeree Members" has the meaning set forth in Section 11.3(a) hereof.
- "Offeree Option Period" has the meaning set forth in Section 11.3(c) hereof.
- "Offeror" has the meaning set forth in Section 11.3(a) hereof.
- "Officers" means those officers identified in Exhibit E hereof and as otherwise designated by the Management Committee.
- "Percentage Interest" means, with respect to any Member as of any date, the ratio (expressed as a percentage) of the number of Units held by such Member on such date to the aggregate Units held by all Members on such date. The Percentage Interest of each Member immediately after the Effective Date is set forth in Section 2.1 hereof.
  - "Permitted Transfer" has the meaning set forth in Section 11.2 hereof.
- "Person" means any individual, partnership (whether general or limited), limited liability company, corporation, trust, estate, association, nominee, or other entity.
  - "Primary Sale Notice" has the meaning set forth in Section 11.3(a) hereof.
- "Profits" and "Losses" mean, for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, 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 (without duplication):
  - (i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;
  - (f) 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 Profits or Losses pursuant to this definition of "*Profits*" and "*Losses*," shall be subtracted from such taxable income or loss:
  - (iii)In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of "Gross Asset Value," the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;
  - (iv)Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by

reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

- (v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Year, computed in accordance with the definition of Depreciation;
- (vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and
- (vii) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section 3.3 or Section 3.4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Sections 3.3 and 3.4 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"Profits Interest" means Units in the Company issued in exchange for services, which Units are structured as "profits interests" defined in Rev. Proc. 93-27, 1993-2 C.B. 343, as clarified by Rev. Proc. 2001-43, 2001-34 I.R.B. 191. A Member holding a Profits Interest shall have an Capital Account balance of zero associated with such Units at the time of issuance, voting rights as a Member consistent with the number of Units then held by such Member including those Units comprising the Profits Interest, and participation rights in the Profits, Losses and distributions of the Company from and after the date of the issuance of the Units as provided in this Agreement. The Profits Interest shall be subject to the terms of this Agreement and, in addition, shall be subject to any terms and conditions of the grant of such Profits Interest imposed by the Board of Managers as may be set forth in the **[grant letter]**.

"Property" means all real and personal property acquired by the Company, including cash, and any improvements thereto, and shall include both tangible and intangible property.

"Purchase Commitment" has the meaning set forth in Section 11.2(b) hereof.

"Purchase Notice" has the meaning set forth in Section 11.1(b) hereof.

"Purchase Offer" has the meaning set forth in Section 10.4(a) hereof.

"Purchase Pool" has the meaning set forth in Section 11.3(d) hereof.

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"Purchaser" has the meaning set forth in Section 10.4(a) hereof.
              "Purchasing Member" has the meaning set forth in Section 11.2(b) hereof.
              "Qualified Initial Public Offering" the closing of an underwritten, firm
commitment initial public offering pursuant to an effective registration statement under the
Securities Act of 1933, as amended, covering the offer and sale by Company of its common
stock in which the aggregate net proceeds to Company equal or exceed Million Dollars
              "Reconstitution Period" has the meaning set forth in Section 12.1(b) hereof.
              "Redeemed Shares" has the meaning set forth in Section 12.1 hereof.
              "Redemption Notice" has the meaning set forth in Section 12.1 hereof.
              "Redemption Price" has the meaning set forth in Section 12.1 hereof.
              "Redemption Rights" has the meaning set forth in Section 12.1 hereof.
              "Regulations" means the Income Tax Regulations, including Temporary
Regulations, promulgated under the Code, as such regulations are amended from time to time.
              "Regulatory Allocations" has the meaning set forth in Section 3.4 hereof.
              "Sale Pool" has the meaning set forth in Section 11.3(e) hereof.
              "Secondary Sale Notice" has the meaning set forth in Section 11.3(c) hereof.
              "Securities Act" means the Securities Act of 1933, as amended.
              "Selling Members" has the meaning set forth in Section 11.3(c) hereof.
              "Tax Matters Member" has the meaning set forth in Section 8.3(a) hereof.
              "Transfer" means, as a noun, any voluntary or involuntary transfer, sale, pledge or
hypothecation, or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell,
pledge or hypothecate, or otherwise dispose of.
              "Units" or "Unit" means an ownership interest in the Company representing a
such Units may be entitled as provided in this Agreement, together with all obligations of such
Person to comply with the terms and provisions of this Agreement.
              "Voluntary Bankruptcy" has the meaning set forth in the definition of
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"Bankruptcy."

# EXHIBIT D

## **INITIAL MANAGERS**

1.

2.

3.

1.

2.

3.

OREXEL UNIVERSIT

## EXHIBIT E

#### APPRAISAL PROCEDURES

Within ten (10) days after the Company, pursuant to Section 12.1 of this Agreement, receives the Redemption Notice, the Company and Drexel will attempt to agree upon the selection of a disinterested independent qualified investment banking firm or other disinterested independent qualified appraiser (the "Appraiser") to determine the Redemption Price. If the parties are able to agree upon an Appraiser, then such Appraiser will be instructed to furnish a written valuation or appraisal (an "Appraisal") within thirty (30) days after its selection. If the parties are unable to agree upon the selection of an Appraiser within a ten (10) day period, then Drexel and the Company will, within five (5) days after the end of such ten (10) day period, each select an Appraiser to determine the Redemption Price. If either Drexel or the Company fails to so select an Appraiser, then the Appraisal of the Appraiser selected by the other shall determine the Redemption Price. If the higher of the two Appraisals is not more than one hundred ten percent (110%) of the lower Appraisal, then the Redemption Price will be the arithmetic average of the two Appraisals. If the higher of the two Appraisals is equal to or greater than one hundred ten percent (110%) of the lower Appraisal, then the two Appraisers shall, within ten (10) days after the issuance of their respective reports, select a third Appraiser to determine the Redemption Price. The third Appraiser will be instructed to issue a written Appraisal within thirty (30) days after this selection. The third Appraisal will be arithmetically averaged with the two Appraisals, and the Appraisal furthest from the average of all three Appraisals will be disregarded. The arithmetic average of the two remaining Appraisals will be the Redemption Price.

Each Appraiser engaged to provide an Appraisal will be instructed (i) to include in the Appraisal a statement of the criteria applied and assumptions made to determine the Redemption Price, (ii) to arrive at a single calculation of the Redemption Price rather than alternative calculations or a range of calculations, and (iii) not to attribute a premium or discount based on the fact that the Units being valued constitutes a majority or less than a majority of the total issued and outstanding Units of the Company. Any Appraisal by an Appraiser that fails to follow the instructions set forth in this Exhibit E will not constitute an Appraisal for purposes of this Agreement; except that the failure of an Appraiser to complete an Appraisal within thirty (30) days as instructed will not affect the validity of such Appraiser's Appraisal. The expenses of all Appraisals will be borne by the Company.