IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
ROSEHILL RESOURCES INC., *et al.*,[1]	Case No. 20-33695 (DRJ)
Debtors.	(Jointly Administered)
	Re: Docket No. 17, 139, 141, 154, 158, 173

NOTICE OF FILING OF THIRD SUPPLEMENT TO PLAN SUPPLEMENT

PLEASE TAKE NOTICE THAT on August 14, 2020, Rosehill Resources Inc. and Rosehill Operating Company, LLC (collectively, the "Debtors") filed the *Notice of Filing of Supplement to Debtors Joint Prepackaged Chapter 11 Plan of Reorganization of Rosehill Resources Inc., et al.* [Docket No. 141] (the "Original Plan Supplement") with the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE THAT on August 20, 2020 the Debtors filed the *Notice of Filing of First Supplement to Plan Supplement* [Docket No. 154] (the "First Amended Plan Supplement") with the Bankruptcy Court to amend the Original Plan Supplement.

PLEASE TAKE FURTHER NOTICE THAT on August 25, 2020 the Debtors filed the *Notice of Filing of Second Supplement to Plan Supplement* [Docket No. 158] (the "Second Amended Plan Supplement") with the Bankruptcy Court to amend the Original Plan Supplement and the First Amended Plan Supplement.

PLEASE TAKE FURTHER NOTICE THAT the Original Plan Supplement, the First Amended Plan Supplement, and the Second Amended Plan Supplement were filed as supplements to, in support of, and in accordance with the *Joint Prepackaged Plan of Reorganization of Rosehill Resources Inc., et al.*, dated July 26, 2020 [Docket No. 17], which has been amended by the *Joint Prepackaged Plan of Reorganization of Rosehill Resources Inc., et al. (Modified as of August 14, 2020)* [Docket No. 139], and further amended by the *Joint Prepackaged Chapter 11 Plan of Reorganization of Rosehill Resources Inc., et al. (Modified as of August 27, 2020)* [Docket No. 173] (as amended or modified from time to time and including all exhibits and supplements thereto, the "Plan").[2]

[1] The Debtors, along with the last four digits of each Debtor's tax identification number, are: Rosehill Resources Inc. (4262), and Rosehill Operating Company, LLC (1818). The Debtors' corporate headquarters and the mailing address for each Debtor is 16200 Park Row, Suite 300, Houston, TX 77084.

[2] Capitalized terms used in this notice or any exhibits attached hereto but not otherwise defined herein have the meanings ascribed to such terms in the Plan.

PLEASE TAKE FURTHER NOTICE THAT the Debtors hereby file this third amendment to the Plan Supplement (the "Third Amended Plan Supplement," and together with the Original Plan Supplement, the First Amended Plan Supplement, and the Second Amended Plan Supplement, the "Plan Supplement") in further support of the Plan.

PLEASE TAKE FURTHER NOTICE that the Third Amended Plan Supplement includes current drafts of the following documents as may be modified, amended, or supplemented from time to time in accordance with the Plan and subject to the Consenting Creditor Consent Right:

- **Exhibit C – Rejected Executory Contract and Unexpired Lease List**
- **Exhibit C-1 – Blackline of Rejected Executory Contract and Unexpired Lease List to the version filed in the Original Plan Supplement**
- **Exhibit L – Reorganized ROC LLC Agreement**
- **Exhibit L-1 – Blackline of Reorganized ROC LLC Agreement to the version filed in the Second Amended Plan Supplement**

PLEASE TAKE FURTHER NOTICE THAT the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

PLEASE TAKE FURTHER NOTICE THAT the Debtors reserve the right to alter, amend, modify, or supplement any document in the Plan Supplement in accordance with the Plan and the Restructuring Support Agreement; *provided*, that any such amended documents shall be subject to the Consenting Creditor Consent Right, and if any document in this Plan Supplement is altered, amended, modified, or supplemented in any material respect prior to the date of the Confirmation Hearing, the Debtors will file a blackline of such document with the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE THAT the Debtors will seek confirmation of the Plan at the Confirmation Hearing scheduled for **August 28, 2020, at 11:00 a.m. (Prevailing Central Time)** before the Honorable David R. Jones at the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Avenue, Courtroom 400, Houston, Texas 77002.

PLEASE TAKE FURTHER NOTICE THAT copies of the Plan, the Plan Supplement, and any other related documents may be obtained free of charge by visiting a public website maintained by Epiq Corporate Restructuring, LLC, located at http://dm.epiq11.com/rosehill or by calling (855) 917-3478. Copies of pleadings may also be obtained by visiting the Bankruptcy Court's website at http://www.txs.uscourts.gov/bankruptcy/ in accordance with the procedures and fees set forth therein.

Dated: August 27, 2020
Houston, Texas

/s/ Kelli S. Norfleet

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on August 27, 2020, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kelli S. Norfleet
Kelli S. Norfleet

Exhibit C

Rejected Executory Contract and Unexpired Lease List

Rejected Executory Contract and Unexpired Lease List

The Debtors filed the initial Rejected Executory Contract and Unexpired Lease List (the "Initial Rejected Executory Contract and Unexpired Lease List") on August 14, 2020 as Exhibit C to the *Notice of Filing of Supplement to Debtors Joint Prepackaged Chapter 11 Plan of Reorganization of Rosehill Resources Inc., et al.* [Docket No. 141] (the "Original Plan Supplement"). The Debtors are hereby revising the Initial Rejected Executory Contract and Unexpired Lease List (as revised, the "Rejected Executory Contract and Unexpired Lease List") to add Executory Contracts or Unexpired Leases with Goodnight Midstream Permian, LLC and Seawolf Water Resources, LP (collectively, the "New Counterparties"). On the Effective Date, except as otherwise provided in the Plan, each of the Debtors' Executory Contracts and Unexpired Leases listed below on this Rejected Executory Contract and Unexpired Lease List shall be rejected unless any such Executory Contract or Unexpired Lease is removed from this Rejected Executory Contract and Unexpired Lease List. Any objection **by the New Counterparties only** to the rejection of an Executory Contract or Unexpired Lease, as applicable, must be Filed, served, and actually received by the counsel to the Debtors, counsel to the Consenting Creditors, the clerk of the Bankruptcy Court, and the United States Trustee on or before **September 3, 2020 at 4:00 p.m. (Prevailing Central Time)**.[1] The Bankruptcy Court shall rule on any such objection at the time of the Confirmation Hearing or such other date and time agreed by the parties or ordered by the Bankruptcy Court. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the rejection will be deemed to have assented to such rejection.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the rejection of Executory Contracts and Unexpired Leases identified on this Rejected Executory Contract and Unexpired Lease List, subject to the ability to object to such rejection by the deadline in the immediately preceding paragraph. Notwithstanding anything to the contrary in the Plan, the Debtors or Reorganized Debtors, as applicable, reserve the right to alter, amend, modify, or supplement the Rejected Executory Contract and Unexpired Lease List prior to the Effective Date.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, which, for the Rejected Executory Contracts and Unexpired Leases included on this Rejected Executory Contract and Unexpired

[1] As provided in the Initial Rejected Executory Contract and Unexpired Lease List, the deadline to object to the rejection of an Executory Contract or Unexpired Lease for all counterparties included on the Initial Rejected Executory Contract and Unexpired Lease List (which included all contract counterparties listed below other than the New Counterparties) was August 21, 2020 at 4:00 p.m. (Prevailing Central Time), and is not being extended hereby.

Lease List, shall be the Effective Date or (3) the Effective Date. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors of further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Proof of Claim to the contrary. All Allowed Claims arising from the rejection of ROC's Executory Contracts or Unexpired Leases shall be classified as ROC General Unsecured Claims and shall be treated in accordance with Article III.B.12 of the Plan. All Allowed Claims arising from the rejection of RRI's Executory Contracts or Unexpired Leases (except for the TRA Claims) shall be classified as RRI General Unsecured Claims and shall be treated in accordance with Article III.B.3 of the Plan.

Rejected Executory Contract and Unexpired Lease List

No.	Contract Party	Contract Counterparty (Name)	Description of Agreement	Agreement Date
1.	Rosehill Resources, Inc.	Certent, Inc.	Subscription and Services Agreement for Equity Management	November 6, 2017
2.	Rosehill Operating Company, LLC	David L. French	Employment Agreement	February 21, 2020
3.	Rosehill Operating Company, LLC	David L. French	Cash Retention Award	April 1, 2020
4.	Rosehill Operating Company, LLC	David L. French	Cash Performance Award Grant Notice	April 1, 2020
5.	Rosehill Operating Company, LLC	David Mora	Employment Agreement	February 10, 2020
6.	Rosehill Operating Company, LLC	David Mora	Cash Retention Award	April 1, 2020
7.	Rosehill Operating Company, LLC	David Mora	Cash Performance Award Grant Notice	April 1, 2020
8.	Rosehill Operating Company, LLC	Fairfield Industries Incorporated d/b/a FairfieldNodal	Master License Agreement (including all sub-agreements, work orders, and supplements)	January 8, 2018

No.	Contract Party	Contract Counterparty (Name)	Description of Agreement	Agreement Date
9.	Rosehill Operating Company, LLC	Fairfield Industries Incorporated d/b/a FairfieldNodal	Supplement Agreement No. 1	January 8, 2018
10.	Rosehill Operating Company, LLC	Fairfield Industries Incorporated d/b/a Fairfield Geotechnologies	Addendum No. 1 to Supplement Agreement No. 1	July 18, 2018
11.	Rosehill Operating Company, LLC	Fairfield Industries Incorporated d/b/a Fairfield Geotechnologies	Release of Data and Indemnification Agreement	January 8, 2018
12.	Rosehill Operating Company, LLC	Fairfield Industries Incorporated d/b/a Fairfield Geotechnologies Tricon Geophysics	Field Data Agreement	September 12, 2018
13.	Rosehill Operating Company, LLC	Goodnight Midstream Permian, LLC	Salt Water Disposal Services Agreement Contract Date: 05-08-2018	May 8, 2018
14.	Rosehill Operating Company, LLC	Goodnight Midstream Permian, LLC	First Amendment To Saltwater Disposal Services Agreement Contract Date: 03-19-2019	March 19, 2019
15.	Rosehill Operating Company, LLC	Jennifer L. Johnson	Employment Agreement	February 21, 2020
16.	Rosehill Operating Company, LLC	Jennifer L. Johnson	Cash Retention Award	April 1, 2020
17.	Rosehill Operating Company, LLC	Jennifer L. Johnson	Cash Performance Award Grant Notice	April 1, 2020
18.	Rosehill Operating Company, LLC	R. Craig Owen	Second Amended and Restated Employment Agreement	February 10, 2020
19.	Rosehill Operating Company, LLC	R. Craig Owen	Cash Retention Award	April 1, 2020

No.	Contract Party	Contract Counterparty (Name)	Description of Agreement	Agreement Date
20.	Rosehill Operating Company, LLC	R. Craig Owen	Cash Performance Award Grant Notice	April 1, 2020
21.	Rosehill Operating Company, LLC	SafetySkills, LLC	Subscription Agreement for Training Materials	January 15, 2019
22.	Rosehill Operating Company, LLC	SCP/LO Park Row, LP	Agreement of Lease as amended by (1) First Amendment to Lease dated 09/30/2014 and (2) Second Amendment to Lease dated 01/14/2017	December 23, 2013
23.	Rosehill Operating Company, LLC	Seawolf Water Resources, LP	Loving\Seawolf\Water Purchase Agmt Contract Date: 10-30-2018	October 30, 2018
24.	Rosehill Resources Inc.	Tema Oil & Gas Company	Tax Receivable Agreement Contract Date: 04-27-2017	April 27, 2017
25.	Rosehill Operating Company, LLC	TGS-NOPEC Geophysical Company ASA	Master License Agreement for Geophysical and Geological Data (including all sub-agreements, work orders, and supplements)	November 30, 2017

Exhibit C-1

Blackline of Rejected Executory Contract and Unexpired Lease List

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13.	Rosehill Operating Company, LLC	~~Jennifer L. Johnson~~Goodnight Midstream Permian, LLC	~~Employment~~Salt Water Disposal Services Agreement Contract Date: 05-08-2018	~~February 21, 2020~~May 8, 2018
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23.	Rosehill Operating Company, LLC	Seawolf Water Resources, LP	Loving\Seawolf\Water Purchase Agmt Contract Date: 10-30-2018	October 30, 2018
24. ~~1.~~	Rosehill Resources Inc.	Tema Oil & Gas Company	Tax Receivable Agreement Contract Date: 04-27-2017	April 27, 2017
25. ~~2.~~	Rosehill Operating Company, LLC	TGS-NOPEC Geophysical Company ASA	Master License Agreement for Geophysical and Geological Data (including all sub-agreements, work orders, and supplements)	November 30, 2017

Exhibit L

Reorganized ROC LLC Agreement

Final Form

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ROSEHILL OPERATING COMPANY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

Dated as of [●], 2020

THE MEMBERSHIP INTERESTS REFERENCED IN THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES AND THEIR OFFER AND SALE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE MEMBERSHIP INTERESTS WHICH ARE REFERENCED HEREIN MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IF THE OFFER OR SALE HAS BEEN REGISTERED AND/OR QUALIFIED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION AND/OR QUALIFICATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS IS AVAILABLE. THERE IS CURRENTLY NO TRADING MARKET FOR THE MEMBERSHIP INTERESTS, AND IT IS NOT ANTICIPATED THAT ONE WILL DEVELOP. THERE ARE SUBSTANTIAL RESTRICTIONS UPON THE TRANSFERABILITY AND VOTING RIGHTS OF THE MEMBERSHIP INTERESTS SET FORTH HEREIN. NO SALE, TRANSFER OR OTHER DISPOSITION BY A MEMBER OF ITS MEMBERSHIP INTERESTS MAY BE MADE EXCEPT IN ACCORDANCE WITH THE TERMS SET FORTH HEREIN. THEREFORE, MEMBERS MAY NOT BE ABLE TO READILY LIQUIDATE THEIR INVESTMENTS.

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Schedule 6.8 Officers

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ROSEHILL OPERATING COMPANY, LLC
a Delaware limited liability company

This Third Amended and Restated Limited Liability Company Agreement of Rosehill Operating Company, LLC, a Delaware limited liability company (the "**Company**"), dated as of [●], 2020 (the "**Effective Date**"), is (a) adopted by the Members (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members. Terms used herein and not otherwise defined shall have the meanings set forth in Article I.

RECITALS:

WHEREAS, the Company was formed as a limited liability company pursuant to the Act by filing a Certificate of Formation (as amended, supplemented or otherwise modified from time to time, the "**Certificate**") filed with the Secretary of State of Delaware on January 6, 2017;

WHEREAS, on December 8, 2017, Rosehill Resources, Inc., a Delaware corporation ("**RRI**"), entered into that certain Second Amended and Restated Limited Liability Company Agreement of the Company (the "**Existing Agreement**") in RRI's capacity as the managing member of the Company pursuant to the Existing Agreement (the "**Existing Managing Member**");

WHEREAS, each of Tema Oil and Gas Company, a Maryland corporation (together with its Affiliates, "**Tema**"), and the EIG Claimants held certain claims against, and interests in, RRI and/or the Company (collectively and together with their respective direct and indirect Subsidiaries, "**Debtors**");

WHEREAS on July 26, 2020, the Debtors filed (i) for chapter 11 protection in the Southern District of Texas (the "**Bankruptcy Court**") in the jointly administered chapter 11 bankruptcy cases under the lead case *In re Rosehill Resources Inc*., Case No. 20-33695 (DRJ), and (ii) the Debtors' joint, prepackaged chapter 11 plan of reorganization (as may be amended, restated, supplemented, or modified from time to time in accordance therewith, the "**Plan**");

WHEREAS, pursuant to the Plan, all property of the Debtors' Estates (as defined in the Plan), except RRI's Equity Interests in the Company, vested in the reorganized Company pursuant to and under the Plan;

WHEREAS, the Plan was confirmed by the Bankruptcy Court on [●], 2020, and, pursuant to the Plan, all of the Equity Interests in the Company (including both RRI's and Tema's Equity Interests) were contributed to Rose Stem LLC, a Delaware limited liability company ("**IntermediateCo**", and such contribution pursuant to the Plan, the "**Contribution**"), and IntermediateCo shall be treated, for U.S. federal (and applicable state and local) income tax

purposes, as a continuation or successor partnership of Rosehill Operating Company, LLC (as it existed prior to the Contribution);

WHEREAS, the Existing Managing Member hereby consents to the amendment and restatement of the Existing Agreement pursuant to this Agreement, and to the withdrawal, effective as of the Effective Date, of the Existing Managing Member as a Member and as the managing member of the Company, as evidenced by their execution of this Agreement solely for the purpose of providing such consent;

WHEREAS, the Parties wish to enter into this Agreement to, among other things, (a) amend and restate the Existing Agreement in its entirety, (b) provide for the withdrawal, as of the Effective Date, of the Existing Managing Member, (c) admit the Members to the Company, (d) provide for the management of the Company, and (e) set forth their respective rights and obligations; and

WHEREAS, following the confirmation of the Plan and the transactions described herein, the Company, for U.S. federal (and applicable state and local) income tax purposes, shall be treated as a new partnership formed by EIG and IntermediateCo in a transaction described in Revenue Ruling 99-5, Situation 2.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby confirmed and acknowledged), the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms have the following meanings:

"**Act**" means the Delaware Limited Liability Company Act, and any successor statute, as amended from time to time.

"**Additional Call Amount**" has the meaning set forth in Section 4.1(b)(i).

"**Adjusted Capital Account**" means the Capital Account, with respect to each Member, maintained for such Member as of the end of each taxable year of the Company, (a) increased by any amounts that such Member is obligated to restore under the standards set by Treasury Regulation section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation sections 1.704-2(g) and 1.704-2(i)(5)), and (b) decreased by items described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Property**" means any property the Carrying Value of which has been adjusted pursuant to Section 4.2(d).

"**Affiliate**" means, when used with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person in question; *provided*, that notwithstanding the foregoing, the Members and their Affiliates (other than the Company or any of its Subsidiaries) shall not be considered Affiliates of one another solely by virtue of their ownership or Control of the Company.

"**Agent**" has the meaning set forth in Section 3.6(c).

"**Agreed Allocation**" means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 5.1.

"**Agreed Value**" of any Contributed Property means the Fair Market Value of such property at the time of contribution.

"**Agreement**" means this Third Amended and Restated Limited Liability Company Agreement of the Company (including any schedules, exhibits and annexes hereto), as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms and conditions set forth herein.

"**Approved MIP**" has the meaning set forth in Section 3.11.

"**Assignee**" means any Person that acquires an interest in any Membership Interest but has not been admitted as a Member in accordance with the terms of this Agreement.

"**Available Cash**" means, as of any date of determination, the following, without duplication and as determined in the sole discretion of the Board acting in good faith:

(a) all cash, cash equivalent amounts and liquid assets held, collected or received by the Company and its Subsidiaries from any and all sources (other than Capital Contributions and the proceeds of indebtedness for borrowed money) during the applicable Estimated Tax Period, *less*

(b) the costs and expenses paid or payable by the Company and its Subsidiaries and amounts reserved for business forecasts, future cash needs, payment of costs (including capital costs and operating and working capital costs and expenses), applicable taxes and similar amounts, debt service, or other reasonable reserves, in each case pursuant to any operating guidelines and annual and quarterly budgets that may be established and approved by the Board.

"**Award Agreements**" has the meaning set forth in Section 3.11.

"**Bankruptcy Code**" means Title 11 of the United States Code.

"**Bankruptcy Court**" has the meaning set forth in the recitals.

"**Blocker**" means any corporation, or entity taxed as a corporation for U.S. federal income tax purposes, that directly or indirectly through one or more intermediary entities treated as partnerships or disregarded entities for U.S. federal income tax purposes, owns no assets or

property other than Membership Interests (and, if applicable, equity interests in any such intermediary entities).

"**Blocker Transfer**" has the meaning set forth in Section 3.6(e).

"**Board**" has the meaning set forth in Section 6.1.

"**Book-Tax Disparity**" means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by applicable Law to be closed in New York, New York or Houston, Texas.

"**Buyer**" has the meaning set forth in Section 3.10(a).

"**Capital Account**" means the capital account maintained for each Member pursuant to Section 4.2.

"**Capital Contribution**" means any cash, cash equivalents or the Agreed Value of Contributed Property that a Member contributes to the Company in respect of Common Units.

"**Carrying Value**" means (a) with respect to Contributed Property, the Agreed Value of such property reduced (but not below zero) by all Simulated Depletion, depreciation, amortization and cost recovery deductions charged to the Members' Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. Notwithstanding the foregoing, the Carrying Value of any property shall be adjusted from time to time in accordance with Section 4.2(d) to reflect changes, additions or other adjustments to the Carrying Value of Company properties, as deemed appropriate by the Board.

"**Certificate**" has the meaning set forth in the Recitals.

"**Change of Control**" means the occurrence of any of the following: (a) the consummation of any transaction (including any merger, consolidation or Transfer of Common Units) the result of which is that one or more Third Parties (other than a Subsidiary of the Company or a Person that was a Member as of the Effective Date) become the beneficial owner, directly or indirectly, of more than 50% of the Common Units; (b) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the Company's assets and the assets of its Subsidiaries, taken as a whole, to one or more Third Parties; *provided, however*, that none of the circumstances in this clause (b) shall be a Change of Control if the Persons that beneficially own more than five percent (5%) of the Common Units immediately prior to the transaction own, directly or indirectly, equity interests with a majority of the total voting power of all of the issued and outstanding equity interests of the surviving entity or transferee Person immediately after the transaction; or (c) the Company consolidates with, or merges with or into, any Third Party or any such Third Party

consolidates with, or merges with or into, the Company, in either case, pursuant to a transaction in which any of the Company's issued and outstanding equity interests or the equity interests of such other Third Party is converted into or exchanged for cash, securities or other property.

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

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Member**" means all Members holding Common Units, including upon any Transfer of Common Units permitted by this Agreement.

"**Common Percentage Interest**" means, as of any date with respect to any Common Member, a percentage equal to (a) the aggregate number of Common Units owned by such Member as of such date divided by (b) the aggregate number of all Common Units issued and outstanding as of such date (excluding, for the avoidance of doubt, any Membership Interests issued pursuant to the Management Incentive Plan).

"**Common Units**" has the meaning set forth in Section 3.1(a).

"**Company**" has the meaning set forth in the Preamble.

"**Company Level Taxes**" means all taxes, penalties and interest payable under the Partnership Tax Audit Rules by the Company or any fiscally transparent entity in which the Company owns an interest.

"**Company Minimum Gain**" has the meaning given the term "partnership minimum gain" in Treasury Regulation section 1.704-2(b)(2) and the amount of which shall be determined in accordance with the principles of Treasury Regulation section 1.704-2(d).

"**Competitor**" means any person that directly or indirectly, through one or more affiliates, (a) actively engages in or (b) has equity commitments or capital available to it for purposes of engaging in, the exploration, development, production, gathering, processing, storing, transporting or marketing of oil, natural gas or natural gas liquids in competition with the Company onshore in North America, as determined by the Board in good faith; *provided*, *however*, Tema and the entities set forth on Exhibit C shall not be deemed "Competitors" for purposes of this Agreement.

"**Confidential Information**" has the meaning set forth in Section 13.8.

"**Consent**" means the affirmative valid consent of the indicated party (including the Board or any committee thereof) to the action requested, whether by an affirmative vote of the required number of Managers at a duly called and convened meeting of the Board where a quorum is present or the execution of a written consent by the required number of Managers, in either case in accordance with the terms hereof and any applicable requirements of the Act, in each case subject to Section 6.3(b).

"**Contributed Property**" means each property or other asset, including equity interests, in such form as may be permitted by the Act, but excluding cash, contributed to the Company. Once

the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.2(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

"**Contribution**" has the meaning set forth in the Recitals.

"**Control**" (including its derivatives and similar terms) means possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of any such relevant Person by ownership of voting interest, by contract or otherwise.

"**Curative Allocation**" means any allocation of an item of income, gain, deduction or loss pursuant to the provisions of Section 5.1(b)(ix).

"**Debt Securities**" has the meaning set forth in Section 3.10(a).

"**Debtors**" has the meaning set forth in the Recitals.

"**Depletable Property**" means each separate oil and gas property as defined in Code Section 614.

"**Dissolution Event**" has the meaning set forth in Section 10.1.

"**Economic Risk of Loss**" has the meaning set forth in Treasury Regulation section 1.752- 2(a).

"**Effective Date**" has the meaning set forth in the Recitals.

"**EIG**" means, collectively, the EIG Member and the FS Member. For the avoidance of doubt, each reference to EIG set forth in this Agreement shall be interpreted as a reference to each of the EIG Member and the FS Member on a several and not joint basis (other than with respect to the rights set forth in Section 6.2(a)(iii), which rights shall be exercisable jointly by the EIG Member and the FS Member), and in no event shall any reference to EIG be deemed to create any obligation or Liability for the EIG Member with respect to the obligations or Liabilities of the FS Member as set forth in this Agreement (or vice versa).

"**EIG Claimants**" means, collectively, EIG Energy Fund XVI, L.P., EIG Energy Fund XVI-B, L.P., EIG Energy Fund XVI-E, L.P., EIG Holdings Partnership (Direwolf), L.P., EIG XVI Holdings Partnership (Direwolf), L.P., EIG-Gateway Direct Investments (Direwolf), L.P., EIG-Keats Energy Partners, L.P. and FS Energy and Power Fund.

"**EIG Manager**" has the meaning set forth in Section 6.2(a)(ii).

"**EIG Member**" means EIG Energy Equity Aggregator Agent (Direwolf), Inc., a Delaware corporation, in its capacity as agent and nominee for Direwolf Equity Aggregator, L.P., a Delaware limited partnership.

"**EIG Monitoring Agreement**" means that certain Monitoring Fee Agreement, dated as of the date hereof, by and between EIG Management Company, LLC, a Delaware limited liability company, and the Company, in the form attached hereto as Exhibit B.

"**Eligible Holder**" means a Person qualified to hold an interest in oil and gas leases on federal lands. As of the date hereof, Eligible Holder means: (a) a citizen of the United States; (b) a corporation organized under the laws of the United States or of any state thereof; (c) a public body, including a municipality; or (d) an association of United States citizens, such as a partnership or limited liability company, organized under the laws of the United States or of any state thereof, but only if such association does not have any direct or indirect foreign ownership, other than foreign ownership of stock in a parent corporation organized under the laws of the United States or of any state thereof. For the avoidance of doubt, onshore mineral leases or any direct or indirect interest therein may be acquired and held by aliens only through stock ownership, holding or control in a corporation organized under the laws of the United States or of any state thereof.

"**Eligible Holder Certification**" means a properly completed certificate in such form as may be specified by the Board by which a Member or Assignee certifies that such Member or Assignee (and if such Member or Assignee is a nominee holding for the account of another Person, that to the best of such Member's or Assign's knowledge such other Person) is an Eligible Holder.

"**Emergency**" means any sudden or unexpected event that causes, or risks causing, imminent physical damage to the assets of the Company, or death or injury to any Person, or damage to the environment, which is of such a nature that a response cannot, in the reasonable discretion of any Officer (exercised in good faith), await the decision of the Board.

"**Equity Interests**" means, with respect to any Person, all Common Units, other common interests, preferred interests or other equity interests of such Person, all securities, directly or indirectly, convertible into or exercisable or exchangeable for Common Units, other common interests, preferred interests or other equity interests of such Person, and all options, warrants and other rights to purchase or otherwise, directly or indirectly, acquire from such Person's shares of Common Units, other common interests, preferred interests or other equity interests of such Person, or securities convertible into or exercisable or exchangeable for shares of Common Units, common interests, preferred interests or other equity interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"**Estimated Tax Payment Date**" has the meaning set forth in Section 5.4(b)(i).

"**Estimated Tax Period**" has the meaning set forth in Section 5.4(b)(i).

"**Exempted Securities**" has the meaning set forth in Section 3.10(e).

"**Existing Agreement**" has the meaning set forth in the Recitals.

"**Existing Managing Member**" has the meaning set forth in the Recitals.

"**Exit Members**" has the meaning set forth in Section 3.6(a).

"**Exit Units**" has the meaning set forth in Section 3.6(a).

"**Fair Market Value**" means the value of any specified interest or property as determined by the Board in good faith which good faith standard shall automatically be deemed satisfied if the Board, at the Board's sole option, obtains a letter from a Qualified Financial Advisor stating that

the Board's valuation is fair, from a financial point of view, to the Company (and on other terms at least as favorable to the Company or its Subsidiaries, in all material respects, that would have been obtained from an unaffiliated Third Party in a comparable arm's length transaction).

"**Fiscal Year**" means the fiscal year of the Company, and its taxable year for federal income tax purposes, each of which shall be the calendar year unless otherwise established by the Board; *provided*, that for purposes of making allocations under Article V hereof, Fiscal Year shall also include or mean any other period in which it becomes necessary to allocate items of income, gain, loss or deduction for tax purposes.

"**Formation Date**" means January 6, 2017.

"**FS Member**" means FSEP Investments, Inc., a Delaware corporation.

"**Fully Exercising Preemptive Rights Holder**" has the meaning set forth in Section 3.10(c).

"**GAAP**" means those generally accepted accounting principles and practices that are recognized as such by the Financial Accounting Standards Board (or any generally recognized successor) and that, in the case of the Company, are applied for all periods after the Effective Date in a consistent manner. If any change in any accounting principle or practice is required by the Financial Accounting Standards Board (or any such successor) in order for such principle or practice to continue as a generally accepted accounting principle or practice, all reports and financial statements required hereunder with respect to the Company or with respect to the Company may be prepared in accordance with such change.

"**Governmental Authority**" means any legislature, court, tribunal, arbitrator, authority, agency, department, commission, division, board, bureau, branch, official or other instrumentality of the U.S., or any domestic state, county, city, tribal or other political subdivision, governmental department or similar governing entity, and including any governmental, quasi-governmental, regulatory, administrative or non-governmental body exercising similar powers of authority.

"**Indemnitee**" means, (a) with respect to each current or former Member: (i) such Member in its capacity as a Member, (ii) each of such Member's direct and indirect officers, directors, liquidators, partners, equity holders, managers and members in their capacity as such, (iii) each of such Member's Affiliates (other than the Company and its Subsidiaries) and each of their respective direct and indirect officers, directors, liquidators, partners, equity holders, managers and members in their capacities as such, and (iv) any representatives, agents or employees of any Person identified in clauses (i)-(iii) of this clause (a), (b) each current or former Manager (or member of a committee of the Board), in such Person's capacity as a Manager (or as a member of a committee of the Board), (c) each current or former Officer, in its capacity as an Officer (each, an "**Officer Indemnitee**"), (d) each current or former Partnership Representative and each current or former Designated Individual and (e) any other Person that the Board expressly designates with Majority Consent as an Indemnitee in a written resolution.

"**Independent Manager**" has the meaning set forth in Section 6.2(a)(iv).

"**Initial Members**" means the EIG Member, the FS Member and IntermediateCo, or any of their respective permitted successors or assigns or Transferees.

"**IPO**" means an initial public offering of the Company (or its successor), including a Subsidiary of the Company, a Person that is the holding company of the Company (or its successor) or any Member that Controls the Company.

"**IntermediateCo**" subject to Section 3.4(h), has the meaning set forth in the Recitals.

"**Joinder**" has the meaning set forth in Section 3.4(d).

"**Laws**" means all federal, state and local statutes, laws (including common law), rules, regulations, codes, orders, ordinances, licenses, writs, injunctions, judgments, subpoenas, awards and decrees and other legally enforceable requirements enacted, adopted, issued or promulgated by any Governmental Authority.

"**Liabilities**" means, as to any Person, all liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"**Liquidator**" has the meaning set forth in Section 10.2.

"**Majority Consent**" means (a) the affirmative vote at any duly called and convened meeting of the Board of more than 50% of all Managers attending such meeting (including by the Managers holding a majority of the number of votes held by all of the Managers then entitled to vote) or (b) the affirmative written Consent in lieu of a meeting of the Board executed by more than 50% of all Managers then constituting the Board (including by the Managers holding a majority of the number of votes held by all of the Managers then entitled to vote). Unless otherwise specified herein, any action or determination by the Board shall be taken or done by Majority Consent, in each case subject to Section 6.3(b).

"**Manager**" has the meaning set forth in Section 6.1.

"**Management Incentive Plan**" means a management incentive plan that provides for the issuance of equity, options and/or other equity-based awards to employees and directors of the Company in the form of restricted units, options, Common Units or other rights, exercisable, exchangeable, or convertible into Common Units representing up to 10% of the then issued and outstanding Common Units on a fully diluted, as-converted, and fully distributed basis, with such other terms and conditions as determined by the Board.

"**Member**" means the EIG Member, FS Member (including when such Members are referred to herein collectively as EIG), IntermediateCo or any Person hereafter admitted to the Company as a new Member as provided in this Agreement, but does not include any Assignee (unless otherwise admitted as a Member to the Company) or any Person who has ceased to be a Member in the Company (including the Existing Managing Member effective as of its withdrawal pursuant hereto).

"**Member Affiliate**" has the meaning set forth in Section 13.14.

"**Member Indemnitor**" has the meaning set forth in Section 3.6(c).

"**Member Nonrecourse Debt**" has the meaning set forth for "member nonrecourse debt" in Treasury Regulation section 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" has the meaning set forth for the term "member nonrecourse debt minimum gain" in Treasury Regulation section 1.704-2(i)(2).

"**Member Nonrecourse Deductions**" means any and all items of loss, deduction, expenditure (including any expenditure described in section 705(a)(2)(B) of the Code), that, in accordance with the principles of Treasury Regulation section 1.704-2(i), are attributable to Member Nonrecourse Debt.

"**Membership Interest**" means the limited liability company interest in the Company.

"**Net Loss**" has the meaning set forth in Section 4.2(b).

"**Net Profit**" has the meaning set forth in Section 4.2(b).

"**New Debt Securities**" has the meaning set forth in Section 3.10(a).

"**New Equity Securities**" has the meaning set forth in Section 3.10(a).

"**Non-Eligible Holder**" means a Person whom the Board has reasonably determined in good faith does not constitute an Eligible Holder.

"**Non-Fully Exercising Preemptive Rights Holder**" has the meaning set forth in Section 3.10(c).

"**Nonrecourse Built-in Gain**" means with respect to any Company properties that are subject to one or more Nonrecourse Liabilities, the amount of any taxable gain that would be allocated to the Members if such properties were disposed of in a taxable transaction in full satisfaction of such Nonrecourse Liabilities and for no other consideration.

"**Nonrecourse Deductions**" means any and all items of loss, deduction, expenditure (described in section 705(a)(2)(b) of the Code) that, in accordance with the principles of Treasury Regulation section 1.704-2(b)(1), are attributable to a Nonrecourse Liability.

"**Nonrecourse Liability**" has the meaning assigned to such term in Treasury Regulation section 1.704-2(b)(3).

"**Officers**" has the meaning set forth in Section 6.8(a).

"**Other Indemnification Agreement**" means one or more certificate or articles of incorporation, by-laws, limited partnership agreement, limited liability company operating agreement, limited partnership agreement and any other organizational document, and insurance policies maintained by any Member or Manager or Affiliate thereof providing for, among other things, indemnification of and advancement of expenses for any Indemnitee for, among other

things, the same matters that are subject to indemnification and advancement of expenses under this Agreement.

"**Parties**" means the Members and the Company.

"**Partnership Representative**" has the meaning set forth in Section 8.2(a).

"**Partnership Tax Audit Rules**" means sections 6221 through 6241 of the Code, including any amendments thereto, together with any Treasury Regulations or administrative guidance issued thereunder or successor provisions, and any similar provisions of applicable state or local Laws.

"**Person**" means any individual or entity, including any corporation, limited liability company, partnership (whether general, limited or otherwise), joint venture, association, joint stock company, trust, unincorporated organization or Governmental Authority.

"**Plan**" has the meaning set forth in the Recitals.

"**Preemptive Rights Holder**" has the meaning set forth in Section 3.10(a).

"**Preemptive Rights Interests**" has the meaning set forth in Section 3.10(a).

"**Preemptive Rights Notice**" has the meaning set forth in Section 3.10(a).

"**Proceeding**" has the meaning set forth in Section 7.1.

"**Profits Interests**" means an interest in the Company that is classified as a partnership profits interest within the meaning of Internal Revenue Service Revenue Procedures 93-27 and 2001-43 (or the corresponding requirements of any subsequent guidance promulgated by the Internal Revenue Service or other applicable Law).

"**Proposed Sale**" has the meaning set forth in Section 3.5(a).

"**Proposed Transfer**" has the meaning set forth in Section 3.7(a).

"**Proposed Transferee**" has the meaning set forth in Section 3.5(a)(i).

"**Qualified Financial Advisor**" means (i) the accounting, appraisal and investment banking firms of national standing as set forth on Schedule 6.3(b)(vii) or (ii) such other accounting, appraisal or investment banking firm of national standing that is engaged by the Company with the prior written consent of each of EIG and IntermediateCo (in each case, which consent shall not be unreasonably withheld, conditioned or delayed).

"**Redeemable Interests**" means any Membership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 3.9.

"**Required Allocations**" means any allocation of an item of income, gain, loss or deduction pursuant to Section 5.1(b)(i), Section 5.1(b)(ii), Section 5.1(b)(iii), Section 5.1(b)(iv), Section 5.1(b)(v), Section 5.1(b)(vi), Section 5.1(b)(vii) and Section 5.1(b)(viii).

"**ROFR Holder**" has the meaning set forth in Section 3.7(b).

"**Required Transfer**" has the meaning set forth in Section 3.6(a).

"**Required Transfer Notice**" has the meaning set forth in Section 3.6(a).

"**ROFR Election Notice**" has the meaning set forth in Section 3.7(b).

"**ROFR Offer Price**" has the meaning set forth in Section 3.7(a).

"**ROFR Offeror**" has the meaning set forth in Section 3.7(a).

"**ROFR Response Outside Date**" has the meaning set forth in Section 3.7(b).

"**ROFR Transfer Notice**" has the meaning set forth in Section 3.7(a).

"**ROFR Transfer Units**" has the meaning set forth in Section 3.7(a).

"**RRI**" has the meaning set forth in the Recitals.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Interest**" means any security interest, lien, mortgage, deed of trust, encumbrance, hypothecation, pledge, purchase option or other similar adverse claim or obligation, whether created by operation of Law or otherwise, created by any Person in any of its property or rights.

"**Simulated Basis**" means the Carrying Value of any Depletable Property.

"**Simulated Depletion**" means, with respect to each Depletable Property, a depletion allowance computed in accordance with U.S. federal income tax principles using the cost depletion method in the manner specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2). For purposes of computing Simulated Depletion with respect to any Depletable Property, the Simulated Basis of such property shall be deemed to be the Carrying Value of such property, and in no event shall such allowance, in the aggregate, exceed such Simulated Basis.

"**Simulated Gain**" means the amount of gain realized from the sale or other disposition of Depletable Property as calculated in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2).

"**Simulated Loss**" means the amount of loss realized from the sale or other disposition of Depletable Property as calculated in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2).

"**Subsidiary**" means, with respect to any relevant Person as of the date the determination is being made, any other Person that (a) is Controlled (directly or indirectly) by such Person and (b) the equity entitled to vote to elect the board of directors, board of managers or other governing authority of which is more than 50% owned (directly or indirectly) by the relevant Person.

"**Tag-Along Notice**" has the meaning set forth in Section 3.5(a).

"**Tag-Along Offer**" has the meaning set forth in Section 3.5(b).

"**Tag-Along Price**" has the meaning set forth in Section 3.5(a)(i).

"**Tag-Along Sale Percentage**" has the meaning set forth in Section 3.5(a)(i).

"**Tag-Along Selling Member**" has the meaning set forth in Section 3.5(a).

"**Tag Units**" has the meaning set forth in Section 3.5(a).

"**Tax Advances**" has the meaning set forth in Section 5.5.

"**Tax Liability**" has the meaning set forth in Section 5.4(b)(i).

"**Tema**" has the meaning set forth in the Recitals.

"**Tema Board Threshold**" means a number of Tema Common Units that represent, in the aggregate, a Common Percentage Interest in excess of 5.0%, measured as of the relevant time of determination.

"**Tema Common Units**" means the aggregate number of (a) Common Units issued to IntermediateCo on the date hereof and pursuant to the Plan in exchange for the contribution by Tema to IntermediateCo of Tema's Contribution, (b) any additional Common Units issued to IntermediateCo in respect thereof following the date of this Agreement, and (c) any such Common Units Transferred to Tema, any successor, assigns or Affiliates thereof, or any Third Party, in each case in accordance with the terms of this Agreement.

"**Tema Manager**" has the meaning set forth in Section 6.2(a)(iii).

"**Tema Qualified Transferee**" means a Transferee of Tema Common Units that, as of the relevant time of determination, owns a number of Tema Common Units that satisfies the Tema Board Threshold.

"**Third Party**" means any Person (other than a Member and its respective Affiliates, and the Company and its Subsidiaries).

"**Third Party Offer**" has the meaning set forth in Section 3.7(a).

"**Transfer**" or "**Transferred**" means, with respect to a Membership Interest, (a) a voluntary or involuntary sale, assignment, transfer, conveyance, exchange, bequest, devise, gift or any other alienation, whether direct or indirect (in each case, with or without consideration and whether by operation of Law or otherwise, including by merger or consolidation) of any rights, interests or obligations with respect to all or any portion of such Membership Interest, or (b) a grant or sufferance of a Security Interest on all or any portion of such Membership Interest, in each case including a Transfer of any equity interests of such Member, other than a Transfer of equity interests that would be a permitted Transfer if such Transfer was of Membership Interests instead of equity interests in a Member.

"**Transferee**" means a Person who receives all or part of a Member's Membership Interest through a Transfer.

"**Treasury Regulation**" means the Income Tax Regulations promulgated under the Code, as may be amended from time to time (including corresponding provisions of successor regulations).

"**Unanimous Consent**" means (a) the affirmative vote of all the Managers constituting the entire Board at a duly called and convened meeting of the Board or (b) the affirmative written consent in lieu of a meeting of the Board executed by all of the Managers (*provided*, that a Manager may grant such affirmative written consent via electronic mail sent to the entire Board), in each case subject to Section 6.3(b).

"**Unpaid Indemnity Amounts**" means any amount that the Company fails to indemnify or advance to an Indemnitee as required by Article VII of this Agreement.

"**Unrealized Gain**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Fair Market Value of such property as of such date (as determined under Section 4.2(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.2(d) as of such date).

"**Unrealized Loss**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.2(d) as of such date) over (b) the Fair Market Value of such property as of such date (as determined under Section 4.2(d)).

1.2 Other Terms. Other capitalized terms may be defined elsewhere in the text of this Agreement and shall have the meaning so given.

1.3 Construction. Unless the context otherwise requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, the singular shall include the plural, and the plural shall include the singular. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is incorporated herein for all purposes. Article and section titles or headings are for convenience only and neither limit nor amplify the provisions of the Agreement itself, and all references herein to articles, sections or subdivisions thereof shall refer to the corresponding article, section or subdivision thereof of this Agreement unless specific reference is made to such articles, sections or subdivisions of another document or instrument. Unless the context of this Agreement clearly requires otherwise, the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation," and the words "hereof," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or Article in which such words appear.

ARTICLE II
ORGANIZATION

2.1 Formation. The Company was organized as a Delaware limited liability company by the filing of a Certificate with the Secretary of State of the State of Delaware pursuant to the

Act on the Formation Date. This Agreement is adopted and agreed to by the Members to set forth their agreement with respect to the Company's business and the rights, duties and obligations of the Members.

2.2 Name. The name of the Company is "Rosehill Operating Company, LLC", and all Company business shall be conducted in that name or such other names that comply with applicable Law as the Board may select from time to time.

2.3 Principal Office; Registered Office and Registered Agent; Other Offices. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the registered office named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by applicable Law. The registered agent for service of process of the Company in the State of Delaware shall be the registered agent named in the Certificate or such other Person as the Board may designate from time to time in the manner provided by applicable Law. The principal office of the Company shall be at such place as the Board may designate from time to time (which may be within or outside of the State of Delaware), and the Board may designate additional offices, places of business and/or agents from time to time as deemed advisable.

2.4 Purpose. The purpose of the Company shall be to (a) hold and manage all of the assets acquired by the Company pursuant to the Plan and this Agreement, (b) engage in any business or activity in which a limited liability company may engage under the laws of the State of Delaware and (c) take such other actions and engage in such other activities as may be reasonably necessary or desirable pursuant to accomplish the specific business activities described in clauses (a) and (b).

2.5 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Delaware, the Board shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Company, with all requirements necessary to qualify the Company as a foreign limited liability company and, if necessary, to make such filings and take such actions as may be required to keep the Company in good standing in that jurisdiction. At the request of the Board, each Member agrees to execute, acknowledge and deliver such certificates and other instruments, if any, that are necessary or appropriate to qualify, continue or terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 Term. The term of the Company commenced upon the filing of the Certificate in accordance with the Act and the Company shall continue until the termination and dissolution thereof in accordance with the provisions of Article X and the Act.

2.7 Existing Managing Member Withdrawal and Release. The Existing Managing Member hereby consents to the amendment and restatement (and termination) of the Existing Agreement pursuant to this Agreement and to the withdrawal, effective as of the Effective Date, of the Existing Managing Member as Member and managing member of the Company, as evidenced by their execution of this Agreement solely for the purpose of providing such consent. The Existing Managing Member hereby releases and forever discharges the Company and the Members and their respective Affiliates and its and their direct and indirect officers, directors,

liquidators, partners, equity holders, managers and members, and the Company and the Members hereby release and forever discharge the Existing Managing Member and its Affiliates and its and their direct and indirect officers, directors, liquidators, partners, equity holders, managers and members, from all manner of actions, causes of action, suits, debts, damages, expenses, claims and demands whatsoever arising out of or in any way connected to this Agreement.

ARTICLE III
MEMBERSHIP INTERESTS AND TRANSFERS

3.1 Classes and Series of Membership Interests; Members.

(a) *Classes and Series*. Each Member's relative rights, privileges, preferences, restrictions and obligations with respect to the Company are represented by such Member's Membership Interests. As of the Effective Date, there shall be one class of Membership Interests of the Company, with such class referred to herein as the "**Common Units**." Membership Interests may be issued in whole or fractional interests. Any issuances of Membership Interests following the Effective Date may be issued by the Company in a separate class or series at a price per Membership Interest as determined by the Board. A Member may own one or more classes or series of Membership Interests, and the ownership of one class or series of Membership Interests shall not affect the rights, privileges, preferences or obligations of a Member with respect to the other class or series of Membership Interests owned by such Member. Any reference herein to a holder of a class of Membership Interests shall be deemed to refer to such holder only to the extent of such holder's ownership of such class or series of Membership Interests.

(b) *Effective Date Issuances*.

(i) On the Effective Date, the Company issued [●] Common Units to the Members, as set forth on Exhibit A, and such Persons were admitted to the Company as Members.

(ii) Additional Persons may be admitted to the Company as new Members only as provided in this Agreement.

(c) *Amendments to Exhibit A*. The Common Units and the respective Common Percentage Interests held by each Member are set forth on Exhibit A attached hereto. Exhibit A shall be amended by an Officer or the Board from time to time to reflect changes and adjustments resulting from (i) the admission of any new Member, (ii) any Transfer in accordance with this Agreement, and/or (iii) any Capital Contributions made, changes to Common Percentage Interests or additional Membership Interests issued, in each case as permitted by this Agreement (*provided*, that a failure to reflect such change or adjustment on Exhibit A shall not prevent any otherwise valid change or adjustment from being effective). Any reference in this Agreement to Exhibit A shall be deemed a reference to the Exhibit A as amended in accordance with this Section 3.1(c) and in effect from time to time.

3.2 Number of Members. The number of Members of the Company shall never be fewer than one.

3.3 Representations and Warranties.

(a) *Representations and Warranties of the Members*. Unless otherwise set forth in an agreement between the Company and a Member, each Member severally (and not jointly) represents and warrants to the Company and each other Member as of the date of such Member's admittance to the Company that (i) to the extent it is not a natural person, it is validly existing and in good standing under the Laws of the jurisdiction of its formation, and if required by Law is duly qualified to conduct business and is in good standing in the jurisdiction of its principal place of business (if not formed in such jurisdiction); (ii) to the extent it is not a natural person, it has full corporate, limited liability company, partnership, trust or other applicable power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, equity holders, managers, members, partners, trustees, beneficiaries or other Persons necessary for the due authorization, execution, delivery and performance of this Agreement by that Member have been duly taken; (iii) it has duly executed and delivered this Agreement, and this Agreement is enforceable against such Member in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity); (iv) its authorization, execution, delivery, and performance of this Agreement does not breach or conflict with or constitute a default under (A) such Member's charter or other governing documents to the extent it is not a natural person or (B) any material obligation under any other material agreement or arrangement to which that Member is a party or by which it is bound; and (v) it: (A) has been furnished with such information about the Company and the Membership Interest as that Member has requested, (B) has made its own independent inquiry and investigation into, and based thereon has formed an independent judgment concerning, the Company and such Member's Membership Interest herein, (C) has adequate means of providing for its current needs and possible contingencies, is able to bear the economic risks of this investment and has a sufficient net worth to sustain a loss of its entire investment in the Company in the event such loss should occur, (D) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, (E) is, or is controlled by, an "accredited investor," as that term is defined in Rule 501(a) of Regulation D, promulgated under the Securities Act, and (F) understands and agrees that its Membership Interest shall not be sold, pledged, hypothecated or otherwise Transferred except in accordance with the terms of this Agreement and pursuant to an effective registration statement under the Securities Act or an applicable exemption from registration and/or qualification under the Securities Act and applicable state securities Laws; *provided*, that, unless prohibited by applicable securities Laws, the foregoing shall not restrict any Initial Member or any of their Affiliates from encumbering or otherwise pledging Common Units in connection with obtaining any financing with respect to an Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

(b) *Representations and Warranties of the Company*. The Company represents and warrants to each Member that as of the Effective Date: (i) it is validly existing and in good standing under the Laws of the State of Delaware; (ii) it has full limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions of its members or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by the Company have been duly taken; (iii) it has duly executed and delivered this Agreement, and this Agreement is enforceable against it in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a

proceeding in a court of law or equity); (iv) its authorization, execution, delivery, and performance of this Agreement does not breach or conflict with or constitute a default under (A) the Certificate or other governing documents or (B) any material obligation under any other material agreement or contract to which the Company or any Subsidiary is a party or by which it or its assets is bound; (v) the Membership Interests issued upon the execution and delivery of this Agreement by the Parties hereto as set forth in Exhibit A have been duly authorized, validly issued and represent fully paid, non-assessable interests of the applicable class or series of Membership Interests set forth on Exhibit A hereto, and the issuance thereof will be made free and clear of all liens, other than restrictions imposed by this Agreement and applicable securities Laws; and (vi) the Company (including its direct and indirect Subsidiaries) is not in default or breach under any material contract, lease, agreement, mortgage, indenture, credit agreement, or other security or instrument to which it is a party or by which it or its assets are bound.

3.4 Restrictions on the Transfer of Interests.

(a) *Permitted Transfers.* Subject to this Section 3.4, Section 3.5, Section 3.6 and any other restrictions set forth in this Agreement, each Member may freely Transfer all or any portion of such Member's Membership Interests (including to any Affiliate, officer, director, equity holder, member, or partners of an Initial Member). Without limiting the foregoing, and for the avoidance of doubt, (i) IntermediateCo may freely Transfer all or any portion of its Membership Interests to Tema, any Affiliate of Tema and any of the entities listed on Exhibit C, and (ii) any of the foregoing Transferees may freely Transfer all or any portion of any Membership Interests they may hold to any of Tema, any Affiliate of Tema and any of the entities listed on Exhibit C and, in each case, such Transfers shall not be subject to any Consent and Section 3.4(c) (to the extent applicable), Section 3.5, and Section 3.7 shall not apply to any such Transfers, notwithstanding anything to the contrary. Any purported Transfer in breach of the terms of this Agreement shall be null and void *ab initio*, and the Company shall not recognize any such prohibited Transfer on its books and records. Any Member who Transfers or attempts to Transfer any Membership Interests except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and the other non-Transferring Members for all fees, costs, expenses, damages and other liabilities resulting therefrom. In connection with the Transfer of any Membership Interests, the holder of such Membership Interests shall deliver written notice to the Company describing in reasonable detail the proposed Transfer at least five (5) Business Days prior thereto.

(b) *Securities and Tax Laws.* Notwithstanding anything in this Agreement to the contrary, without the prior approval of the Board, no Membership Interest shall be Transferred (i) except pursuant to an effective registration statement under the applicable securities Laws or an applicable exemption from registration and/or qualification under the Securities Act and any other applicable securities Laws or (ii) if such Transfer would create a reasonable likelihood that the Company could be treated as a "publicly traded partnership" as defined in section 7704(b) of the Code.

(c) *Competitors*. Notwithstanding anything in this Agreement to the contrary, no Membership Interest shall be Transferred to a Competitor; *provided*, that the foregoing shall not restrict Transfers by any Member to (a) another Member or Subsidiary of another Member, (b) any Person organized, formed, incorporated or managed by a private equity fund or other

similar investment fund (excluding portfolio companies) or (c) another Member or any Person in connection with a Required Transfer.

(d) *Documentation; Validity of Permitted Transfer.* Any Transfer of a Membership Interest that complies with Section 3.4(a) and Section 3.4(b), shall be effective to assign the right to become a Member, and, without the need for any action or Consent of any other Person, a Transferee of such Membership Interest shall automatically be admitted as a Member once the Company has received a customary joinder agreement in a form acceptable to the Board which has been executed by such Transferee (a "**Joinder**"), pursuant to which such Transferee shall (i) become a party to this Agreement as a Member and shall have the rights and obligations of a Member hereunder, (ii) expressly assume all liabilities and obligations of the Transferring Member (or its applicable Affiliates) to the Company or the other Members and (iii) if the Transferee is to be admitted to the Company as a new Member, acknowledge the representations and warranties in Section 3.3 are true and correct with respect to such Transferee as of the date of the Joinder. Each Transfer is effective against the Company as of the Business Day of delivery of the Joinder to the Company.

(e) *Expenses*. Any costs incurred by the Company in connection with any Transfer by a Member of all or a part of its Membership Interests shall be borne by such Transferring Member. Any transfer or similar taxes arising as a result of the Transfer of a Member's Membership Interest shall be paid by the Transferring Member.

(f) *Distributions*. Any distribution or payment made by the Company to a Transferring Member prior to such time as the Transferee was admitted as a Member pursuant to the provisions of this Agreement with respect to the Transferred Membership Interests shall constitute a release of the Company, the Managers authorizing such distribution and the Members of all liability to such Assignee or new Member who may be interested in such distribution or payment by reason of such Transfer.

(g) *Pledging of Common Units by Initial Members.* Notwithstanding anything to the contrary contained in any provision of this Agreement, unless prohibited by applicable securities Laws, any Initial Member and any of their Affiliates shall be permitted to encumber or otherwise pledge Common Units in connection with obtaining any financing with respect to an Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

(h) *IntermediateCo Transfers*. Notwithstanding anything to the contrary in this Agreement, in the event of a liquidation, dissolution or similar transaction of IntermediateCo that results in the Transfer by IntermediateCo to Tema of Common Units (or IntermediateCo otherwise Transfers Common Units to Tema), Tema shall be entitled to exercise the rights granted to IntermediateCo pursuant to this Agreement to the extent the number of Common Units so Transferred to Tema and/or its Affiliates (and still owned by Tema or its Affiliates as of the relevant time of determination) would be sufficient to allow IntermediateCo to exercise such rights had such Common Units not been Transferred to Tema and/or its Affiliates and were instead retained by IntermediateCo. Tema is a third-party beneficiary to this Section 3.4(h) and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

3.5 Tag-Along Rights.

(a) If at any time prior to the consummation of an IPO, a Member proposes to Transfer more than 15%, collectively in one or a series of transactions (directly or indirectly through holding company or companies), of any of the Membership Interests (other than Membership Interests issued pursuant to the Management Incentive Plan) (the "**Tag Units**") held by such Member and its Affiliates (directly or indirectly through a holding company or companies) (the "**Tag-Along Selling Member**") to a Third Party purchaser (a "**Proposed Sale**"), other than in a Required Transfer (in which case Section 3.6 shall exclusively govern), then such Tag-Along Selling Member shall furnish to each of the other Members holding the same class of Membership Interests a written notice of such Proposed Sale (the "**Tag-Along Notice**") and provide them the opportunity to participate in such Proposed Sale with respect to such same class of Membership Interests on the terms described in this Section 3.5. The Tag-Along Notice will include:

(i) the material terms and conditions of the Proposed Sale, including (A) the number, class and series of Tag Units proposed to be Transferred by the Tag-Along Selling Member in the Proposed Sale, (B) the name of the proposed Transferee (the "**Proposed Transferee**"), (C) the proposed amount and form of consideration to be received in such Proposed Sale in respect of each class or series of Tag Units included in the Proposed Sale (with respect to each such class or series of Tag Units, the "**Tag-Along Price**"), (D) the proposed Transfer date, if known, which date shall not be less than 20 Business Days after delivery of such Tag-Along Notice and (E) the fraction, expressed as a percentage, determined by *dividing* (1) the number of Tag Units to be Transferred by the Tag-Along Selling Member, by (2) the total number of such class of Tag Units held by the Tag-Along Selling Member (such percentage, the "**Tag-Along Sale Percentage**"); and

(ii) an invitation to each Member to include in the Proposed Sale, Tag Units up to a number equal to (A) the Tag-Along Sale Percentage *multiplied by* (B) the total number of such Tag Units held by such Member.

(b) In order to effectively exercise the tag-along rights provided in this Section 3.5, a Member must, within 15 Business Days following receipt of the Tag-Along Notice, deliver a notice (the "**Tag-Along Offer**") to the Member (i) indicating such Member's desire to irrevocably and unconditionally exercise its tag-along rights hereunder and (ii) specifying the number of Tag Units such Member elects to include in the Proposed Sale pursuant to Section 3.5(a)(ii). If a Member does not deliver a Tag-Along Offer within 15 Business Days following delivery of the Tag-Along Notice, such Member shall be deemed to have waived its rights under this Section 3.5 with respect to such Proposed Sale, and the Tag-Along Selling Member shall thereafter be free to Transfer its Tag Units to the Proposed Transferee without the participation of such Member, at the Tag-Along Price and on other material terms no more favorable in the aggregate than the Tag-Along Price and material terms specified in the Tag-Along Notice; *provided*, that to the extent a Member does not fully exercise their rights under this Section 3.5(b), the Members that elect to participate in the Proposed Sale pursuant to this Section 3.5 shall have the right and option (but not the obligation) to purchase their pro rata portion (based on the issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan)) of any unsubscribed portion of the remaining Tag

Units. If a Member elects to participate in the Proposed Sale pursuant to this Section 3.5, such Member shall agree to make to the Proposed Transferee representations and warranties, covenants and indemnities, in each case, that are no more burdensome than those agreed to by the Tag-Along Selling Member in connection with the Proposed Sale; *provided*, that such Member shall receive the same form and amount of consideration per interest as the consideration received by the Tag-Along Selling Member in respect of each applicable class or series of Tag Units (with no premium or additional compensation being paid for the Tag-Along Selling Member's Membership Interests), or if the Tag-Along Selling Member is given an option as to the form and amount of consideration to be received, the participating Members will be given the same option other than to the extent of any limitation under applicable Law, including the Securities Act, which would prevent a Member from receiving a certain form of consideration; *provided*, (x) the Tag-Along Selling Member shall not be liable for any breach of any covenant or representation and warranties by another Member (and vice versa), (y) in no event shall any Member be required to make representations and warranties or provide indemnities as to any other Member (including any indemnity obligations that relate specifically to a particular Member, such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of Membership Interests) and (z) any liability relating to representations and warranties (and related indemnities) or other indemnification obligations regarding the business of the Company in connection with the Proposed Sale shall be shared by the participating Members pro rata on a several (but not joint) basis in proportion to the consideration to be received in the Proposed Sale by each participating Member. For the avoidance of doubt, the Tag-Along Price per Tag Unit may differ to the extent necessary in order to reflect differences, if any, in the amounts otherwise distributable to the Tag Units in accordance with this Agreement.

(c) The offer of any Member contained in such Member's Tag-Along Offer shall be irrevocable, and, to the extent such offer is accepted, such Member shall be bound and obligated to Transfer in the Proposed Sale on the same terms and conditions as the Tag-Along Selling Member, up to such number of Tag Units such Member shall have specified in its Tag-Along Offer; *provided, however*, that if the material terms of the Proposed Sale change, with the result that the price per Tag-Along Selling Member's Tag Units to be transferred shall be less than the price per Common Unit set forth in the Tag-Along Notice (with the result being that the price per Tag Unit is also less than that proposed in the Tag-Along Offer), the form or amount per interest of consideration shall be different or the other terms and conditions shall be materially less favorable in the aggregate to the other Members than those set forth in the Tag-Along Notice, such Member shall be permitted to withdraw the offer contained in the applicable Tag-Along Offer by written notice to the Tag-Along Selling Member and upon such withdrawal shall be released from such holder's obligations.

(d) If a Member exercises its rights under this Section 3.5, the closing of the sale of each Member's Tag Units in the Proposed Sale will take place concurrently. If the closing with the Proposed Transferee (whether or not a Member has exercised its rights under this Section 3.5) shall not have occurred by 5:00 p.m. Central Time on the date that is 120 days after the date of the Tag-Along Notice, as such period may be extended to obtain any required regulatory approvals, and on material terms no more favorable in the aggregate than the per Tag-Along Selling Member's Tag Unit price and material terms specified in the Tag-Along Notice, all the restrictions on Transfer contained in this Agreement shall again be in effect with respect to such Tag-Along Selling Member's Tag Units and proposed Transfer.

(e) The Company shall bear the costs of the Members arising pursuant to a Proposed Sale, including costs incurred in connection with the negotiation of any Proposed Sale; *provided*, that any costs incurred by a Member (and not by the Company on behalf of the Members) shall be customary and reasonable in nature.

3.6 Required Transfers; Exit Transactions.

(a) Subject to Section 6.3(b), if a Change of Control or IPO is duly authorized or approved by the Board, the Members hereby acknowledge and agree that the Company is authorized to sell, exchange or Transfer all, but not less than all, Membership Interests (the "**Exit Units**") in order to either (i) effectuate such Change of Control or IPO or (ii) reorganize the organization or capital structure of the Company in order to effectuate such Change of Control or IPO (each, a "**Required Transfer**"), by delivering a written notice (a "**Required Transfer Notice**") with respect to such Required Transfer at least 30 Business Days prior to the anticipated closing date of such Required Transfer (or at least 20 days prior to the Company's initial submission or filing with the Commission of a registration statement with respect to an IPO) to all applicable Members ("**Exit Members**") requiring them to submit for sell, exchange or otherwise Transfer their Exit Units in accordance with the provisions of this Section 3.6.

(b) The Required Transfer Notice will include the material terms and conditions of the Required Transfer, including (i) the name and address of the proposed Transferee or acquiror, (ii) the proposed amount and form of consideration (and if such consideration consists in part or in whole of property other than cash, the Company will provide such information, to the extent reasonably available to it, relating to such non-cash consideration as the Exit Members may reasonably request in order to evaluate such non-cash consideration; *provided*, *however*, that the provision of such information (or lack thereof) shall not relieve any Exit Member of its obligation to sell or otherwise Transfer Exit Units under this Section 3.6) and (iii) the proposed date of the Required Transfer, if known. The Company will deliver or cause to be delivered to each Exit Member copies of all transaction documents relating to the Required Transfer promptly as the same become available.

(c) Each Exit Member, upon receipt of a Required Transfer Notice, shall be obligated (i) to submit for sell, exchange or otherwise Transfer its respective Exit Units and participate in the Required Transfer, (ii) to vote, if required by this Agreement or Law, its Exit Units in favor of the Required Transfer at any meeting of the Company called to vote on or approve the Required Transfer or to consent in writing to the Required Transfer, (iii) to cause any Manager designated or nominated by such Exit Member to the Board to vote in favor of the Required Transfer in a vote by the Board called to vote on or approve the Required Transfer or to consent in writing to the Required Transfer, (iv) to waive all dissenters' or appraisal rights, if any and applicable, in connection with the Required Transfer, (v) to enter into agreements effectuating the Required Transfer, (vi) to agree (as to itself) to make to the proposed Transferee the same representations, warranties, covenants, indemnities and agreements as each other Member (including each Exit Member) agrees to make in connection with the Required Transfer, and to take or cause to be taken all other actions as may be reasonably necessary to consummate the Required Transfer; *provided*, (x) no Exit Member shall be liable for any breach of any covenant or representation and warranties by another Member (and vice versa), (y) in no event shall any Member be required to make representations and warranties or provide indemnities as to any other

Member (including any indemnity obligations that relate specifically to a particular Member, such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of Membership Interests) and (z) any liability relating to representations and warranties (and related indemnities) or other indemnification obligations regarding the business of the Company in connection with the Required Transfer shall be shared by (I) the Initial Members and their Affiliates, in each case that are Members as of the consummation of such Required Transfer (each to the extent of their respective ownership of Equity Interests) and (II) without duplication of amounts in the foregoing clause (I), each Common Member as of the consummation of such Required Transfer (other than any such Common Member that is a Common Member by virtue of owning Equity Interests of the Company that were issued pursuant to the Approved MIP and solely with respect to such Equity Interests, unless the terms of the Approved MIP expressly provide otherwise) (each, a "**Member Indemnitor**"), on a several (but not joint) basis in proportion to the consideration to be received in the Proposed Sale by each participating Member Indemnitor (*provided*, that no Member Indemnitor's liability shall exceed the consideration received by such Member Indemnitor in connection with a Required Transfer). In furtherance of, but only to the extent that a Member breaches its obligations under this Section 3.6 (which is intentional or willful), each of the Members hereby (A) irrevocably appoints the Officer duly authorized by the Board as its agent and attorney-in-fact (the "**Agent**") (with full power of substitution) to execute all agreements, instruments and certificates and take all actions necessary or desirable to effectuate any Required Transfer hereunder and (B) grants to the Agent a proxy (which shall be deemed to be coupled with an interest and irrevocable) to vote the Membership Interests held by such Member in favor of any Required Transfer hereunder. The Company shall be obligated to pay any fees, costs and expenses incurred in connection with any unconsummated Required Transfer, and all expenses of a Required Transfer, including bankers' fees, attorneys' fees and accountants' fees.

(d) In connection with an IPO that is duly authorized or approved by the Board, (i) the Board shall cause the Company (or any successor entity) to enter into a standard and customary registration rights agreement, which provides as a condition to the consummation of any such IPO that IntermediateCo (or the Person that is the owner of record of IntermediateCo's Membership Interests at the time of such IPO) be party to such registration rights agreement and be granted standard and customary "piggyback" registration rights in respect of the equity interests received by IntermediateCo, directly or indirectly, in connection with such IPO in exchange for its Membership Interests and (ii) each of the Members will receive the same class of security in the IPO issuer *pro rata*, and on any such conversion or exchange, the Board shall cause the Company to provide each Member substantially similar economic and other rights, privileges and preferences in respect of their equity in the IPO issuer as the equity securities they are exchanging or converting.

(e) Notwithstanding anything to the contrary herein, any Change of Control or IPO or any other transaction may, in the Board's sole discretion, be structured as a sale or transfer of equity securities of a Blocker (or Blockers) affiliated with a Member (including any Blockers that are Members), including (in connection with an IPO) by merging such Blocker(s) or transferring such equity securities in a tax-free transaction, including under Sections 368 or 351 of the Code (any such Change of Control or IPO structure, a "**Blocker Transfer**"); *provided*, that (i) neither the Company nor the Board shall be under any obligation to structure any Change of Control or IPO as a Blocker Transfer and (ii) if a Change of Control is structured as a Blocker

Transfer, no Member (other than the Member(s) affiliated with or controlling the Blocker(s) subject to such Blocker Transfer) shall suffer or incur any reduction in purchase consideration or liability or obligation (including any tax liabilities or obligations) resulting from such Blocker Transfer, and any such reduction or liability or obligation (including any tax liability or obligation) shall be borne solely by the Member(s) affiliated with such Blocker(s).

3.7 Right of First Refusal.

(a) If a (i) Common Member, other than EIG, receives a bona fide written offer from a Third Party (the "**Third Party Offer**") for the purchase of all or a part of such Member's Common Units and is otherwise permitted to by this Agreement to consummate such a Transfer, (a proposed Transfer pursuant to this clause (i), a "**Proposed Transfer**" and such units, the "**ROFR Transfer Units**"), and (ii) such offering Common Member (the "**ROFR Offeror**") desires to effect such Proposed Transfer, such ROFR Offeror shall first give the Company notice, in writing, of a right of first refusal (any such notice, a "**ROFR Transfer Notice**") to purchase the ROFR Transfer Units. The ROFR Transfer Notice shall set forth the name of the Third Party (including, if such information is not publicly available, information about the identity of the Third Party), the number, class, and series of the ROFR Transfer Units, the proposed price per ROFR Transfer Unit, inclusive of any contingent consideration (the "**ROFR Offer Price**"), all details of the payment terms and all other material terms and conditions of the Proposed Transfer. The ROFR Offer Price per ROFR Transfer Unit may differ to the extent necessary in order to reflect differences, if any, in the amounts otherwise distributable to the ROFR Transfer Units in accordance with this Agreement. A Proposed Transfer may not contain provisions related to any property of the ROFR Offeror other than the Common Units held by the ROFR Offeror or contemplate any consideration other than cash (in U.S. dollars) and the ROFR Offeror may not accept a Third Party Offer if such offer contains provisions inconsistent with the foregoing.

(b) Upon receipt of a ROFR Transfer Notice, the Company will have the exclusive right, but not the obligation, to purchase the ROFR Transfer Units, in whole or in part, by delivery a written notice (any such notice, a "**ROFR Election Notice**") to the ROFR Offeror within 10 Business Days of the receipt by the Company of such ROFR Transfer Notice. If the Company declines or otherwise fails to provide a ROFR Election Notice within such 10-Business Day period, then the ROFR Offeror shall next provide EIG with a ROFR Transfer Notice for EIG (or its Affiliates) to purchase all or any portion of the remaining ROFR Transfer Units within five Business Days of the receipt by EIG of such ROFR Transfer Notice. If EIG fails to provide a ROFR Election Notice within such ten-Business Day period, then the ROFR Offeror shall next provide IntermediateCo with a ROFR Transfer Notice to purchase all or any portion of the remaining ROFR Transfer Units within 10 Business Days of the receipt by IntermediateCo of such ROFR Transfer Notice. In the event that neither the Company, EIG nor IntermediateCo exercises a ROFR Election Notice in accordance with the foregoing, then the ROFR Offeror shall provide a ROFR Transfer Notice to each of the Common Members (excluding the holders of Membership Interests issued under the Management Incentive Plan) (together with the Company, EIG and IntermediateCo, for purposes of this Section 3.7, the "**ROFR Holders**") for the option to purchase such Common Member's pro rata share of the remaining ROFR Transfer Units within 10 Business Days of receipt of such ROFR Transfer Notice (the "**ROFR Response Outside Date**"); *provided*, that to the extent ROFR Holders do not fully exercise their rights under this Section 3.7(b), the ROFR Holders that provided a ROFR Election Notice shall have the right and option (but not the

obligation) to purchase their pro rata portion (based on the issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan)) of any unsubscribed portion of the remaining ROFR Transfer Units. Any ROFR Election Notice must contain a binding and enforceable commitment by each ROFR Holder that delivered a ROFR Election Notice to pay the entire amount of the ROFR Offer Price attributable to the ROFR Transfer Units to be acquired by such ROFR Holder in accordance with this Section 3.7, including any contingent consideration, in full at the closing of the proposed transaction. The delivery of a ROFR Election Notice pursuant to this Section 3.7 shall constitute an irrevocable commitment to purchase such ROFR Transfer Units.

(c) If, after compliance with the provisions of Section 3.7(b), a ROFR Holder has elected to purchase ROFR Transfer Units, then the Company shall thereafter set a reasonable place and time for the closing of the purchase and sale of such ROFR Transfer Units, which shall occur as promptly as reasonably practicable following the receipt of any required third-party or regulatory approvals (including pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or similar laws) on a date and time as agreed in good faith between the applicable ROFR Holder(s) and the ROFR Operator, subject to Section 3.7(e).

(d) The purchase price and other terms and conditions for the purchase of the ROFR Transfer Units pursuant to this Section 3.7 shall be as set forth in the applicable ROFR Election Notice; *provided*, that the ROFR Offeror shall make customary representations and warranties concerning (i) such ROFR Offeror's valid title to an ownership of the ROFR Transfer Units, free and clear of all liens, claims and encumbrances (excluding those arising under this Agreement and any applicable securities Laws), (ii) the ROFR Offeror's authority, power and right to enter into and consummate the sale of the ROFR Transfer Units, (iii) the absence of any violation, default or acceleration of any agreement to which the ROFR Offeror is subject or by which its assets are bound as a result of the agreement to sell and the sale of the ROFR Transfer Units and (iv) the absence of, or compliance with, any governmental or third party consents, approvals, filings or notifications required to be obtained or made by the ROFR Offeror in connection with the sale of the ROFR Transfer Units. The Company, the applicable ROFR Holder(s), the Company, the Board and the ROFR Offeror also agree to execute and deliver such customary instruments and documents and take such actions, including obtaining all applicable approvals and consents and making all applicable notifications and filings, as such ROFR Holder(s), the Company, the Board and the ROFR Offeror may reasonably request in order to effectively implement the purchase and sale of the ROFR Transfer Units hereunder. The Company, the Board and the ROFR Offeror will promptly cooperate with any reasonable requests of the ROFR Holder for information regarding the ROFR Transfer Units.

(e) Notwithstanding the foregoing, (i) if there is no election to purchase all of the ROFR Transfer Units in accordance with Section 3.7(b) on or prior to the termination of the final ROFR Response Outside Date, then the ROFR Offeror may sell that portion of the ROFR Transfer Units that are not the subject of a ROFR Election Notice within 60 days of the ROFR Response Outside Date or (ii) if the ROFR Holder fails to consummate the closing of the purchase and sale of the ROFR Transfer Units on or prior to the ROFR Response Outside Date (and the ROFR Offeror has fully complied with the provisions of this Section 3.7), then such ROFR Holder shall not have the right to purchase any of the ROFR Transfer Units, and the ROFR Offeror may sell that portion of the ROFR Transfer Units that are not the subject of a ROFR Election Notice to

the offeror of the Third Party Offer within 60 days after the ROFR Response Outside Date, subject to the terms of this Agreement. Any such sale shall not be at less than the price or upon terms and conditions more favorable, individually or in the aggregate, than those specified in the ROFR Transfer Notice. If the ROFR Transfer Units are not so transferred within such 60-day period, then the ROFR Offeror may not sell any of the ROFR Transfer Units without again complying with the provisions of this Section 3.7.

(f) Any purchaser of ROFR Transfer Units:

(i) shall be required to make the same representations and warranties as the ROFR Offeror in connection with such Member's initial purchase of Common Units;

(ii) must execute and deliver a Joinder to the Company; and

(iii) other than a Tema Qualified Transferee, shall not have the right to appoint a Manager under Section 6.2(a).

3.8 Eligible Holder Certifications; Non-Eligible Holders.

(a) If an Assignee fails to furnish to the Company a properly completed Eligible Holder Certification properly requested pursuant to Section 3.8(b), or if, upon receipt of such Eligible Holder Certification or otherwise, the Board reasonably determines in good faith that such Assignee is not an Eligible Holder, the Membership Interests owned by such Assignee shall be subject to redemption in accordance with the provisions of Section 3.9.

(b) The Board may request, in writing, that any Member or Assignee furnish to the Board, within 30 days after receipt of such written request, an executed Eligible Holder Certification or such other reasonably necessary information concerning such Person's nationality, citizenship or other related status (or, if the Member or Assignee is a nominee holding for the account of another Person (other than any Person who directly or indirectly owns equity interests in a corporation incorporated under the laws of the United States or any State or territory thereof, so long as that corporation (i) is qualified to hold federal leases under 30 U.S.C. 181 and 43 C.F.R. 3102.2 or its successor stature or rule and (ii) is the direct and indirect owner of such Assignee), the nationality, citizenship or other related status of such Person) as the Board in good faith may request in writing. If a Member or Assignee fails to furnish to the Board within the aforementioned 30-day period, such Eligible Holder Certification or other requested information or if upon receipt of such Eligible Holder Certification or other requested information the Board determines in good faith that a Member or Assignee is not an Eligible Holder, the Membership Interests owned by such Member or Assignee shall be subject to redemption in accordance with the provisions of Section 3.9. In addition, the Board may require that the status of any such Member or Assignee be changed to that of a Non-Eligible Holder and, thereupon, the Board shall be substituted for such Non-Eligible Holder as the Member in respect of the Non-Eligible Holder's Membership Interests, and any Manager appointed by such Non-Eligible Holder pursuant to Section 6.2 shall be removed as Manager.

(c) The Board shall, in exercising voting rights in respect of Membership Interests held by it on behalf of Non-Eligible Holders, distribute the votes in the same ratios as the

votes of Members in respect of Membership Interests other than those of Non-Eligible Holders are cast, either for, against or abstaining as to the matter.

(d) At any time after a Non-Eligible Holder can and does certify that it has become an Eligible Holder, a Non-Eligible Holder may, upon application to the Board, request admission as a Member with respect to any Membership Interests of such Non-Eligible Holder not redeemed pursuant to Section 3.9, and upon admission of such Non-Eligible Holder as a Member, the Board shall cease to be deemed to be the Member in respect of the Non-Eligible Holder's Membership Interests.

3.9 Redemption of Membership Interests of Non-Eligible Holders.

(a) If at any time a Member or Assignee fails to furnish an Eligible Holder Certification or other information requested within the 30-day period specified in Section 3.8(b), or if upon receipt of such Eligible Holder Certification or other information, the Board reasonably determines in good faith, with the advice of counsel, that a Member or Assignee is not an Eligible Holder, the Company may, unless the Member or Assignee establishes to the reasonable satisfaction of the Board in good faith that such Member or Assignee is an Eligible Holder or has Transferred such Member's Membership Interests to a Person who is an Eligible Holder and who furnishes an Eligible Holder Certification to the Board prior to the date fixed for redemption as provided below, redeem the Membership Interest of such Member or Assignee as follows:

(i) The Board shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Member or Assignee, at such Person's last address designated on the records of the Company. The notice shall be deemed to have been given when so sent. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the any certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Member or Assignee would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Fair Market Value (the date of determination of which shall be the date fixed for redemption) of Membership Interests of the class to be so redeemed multiplied by the number of Membership Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the Board, in cash or by delivery of a promissory note of the Company in the principal amount of the redemption price, bearing interest at the rate of 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) Upon surrender by or on behalf of the Member or Assignee, at the place specified in the notice of redemption, of any certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank, the Member or Assignee or such Member's or Assignee's duly authorized representative shall be entitled to receive the payment therefor.

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and outstanding Membership Interests.

(b) The provisions of this Section 3.9 shall also be applicable to Membership Interests held by a Member or Assignee as nominee of a Person determined to be other than an Eligible Holder.

(c) Nothing in this Section 3.9 shall prevent the recipient of a notice of redemption from Transferring such Member's Membership Interest before the redemption date if such Transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a Transfer, the Board shall withdraw the notice of redemption, provided the Transferee of such Membership Interest certifies to the satisfaction of the Board that the Transferee is an Eligible Holder. If the Transferee fails to make such certification, such redemption shall be effected from the Transferee on the original redemption date.

3.10 Preemptive Rights.

(a) If the Company offers to issue any (i) Equity Interests of the Company or any of its Subsidiaries, to any Person ("**New Equity Securities**") or (ii) unsecured or secured debt obligations of the Company or any of its Subsidiaries ("**Debt Securities**") to any Member or Affiliate of a Member (or, if none of EIG or its Affiliates are a Member of the Company as of the relevant time of determination but EIG or its Affiliates own Debt Securities of the Company as of such time, to EIG) ("**New Debt Securities**" and, together with New Equity Securities, the "**Preemptive Rights Interests**"), the Company shall: (i) provide each Common Member (each, a "**Preemptive Rights Holder**") at least 15 days' prior written notice of the proposed issuance, setting forth in reasonable detail the proposed terms and conditions of the proposed issuance and such Preemptive Rights Holder's Common Percentage Interest of such proposed issuance (the "**Preemptive Rights Notice**") and (ii) offer to sell to each Preemptive Rights Holder a portion of such Preemptive Rights Interests equal to such Preemptive Rights Holder's pro rata portion of issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan). The purchase price for all such Preemptive Rights Interests offered to Preemptive Rights Holders under this Section 3.10 shall be payable in cash; *provided*, that, to the extent any Preemptive Rights Holder that exercises its rights pursuant to this Section 3.10 (each, a "**Buyer**") tenders non-cash consideration, the Preemptive Rights Holders that are participating shall be required to tender the proportionate cash equivalent of such non-cash consideration, as determined by the Board in good faith.

(b) In order to exercise its preemptive rights hereunder, a Preemptive Rights Holder must, within 15 days after receipt of the Preemptive Rights Notice, deliver a written notice to the Company describing such Preemptive Rights Holder's election to purchase its Common Percentage Interest of the Preemptive Rights Interests offered thereby (or such portion thereof as the Preemptive Rights Holder may elect to purchase), in which case the Company (or its Subsidiary, as the case may be) shall sell to such Preemptive Rights Holder the Preemptive Rights Interests such Preemptive Rights Holder elected to purchase at the same price and on the same terms as such Preemptive Rights Interests were offered to any Buyer. To the extent that any Preemptive Rights Holder does not notify the Company that it intends to exercise its right to participate in any issuance of Preemptive Rights Interests subject to this Section 3.10 within 15

days after receipt of the Preemptive Rights Notice, such Preemptive Rights Holder shall be deemed to have waived the rights set forth in this Section 3.10 solely in respect of such issuance.

(c) Notwithstanding the foregoing, if any Preemptive Rights Holder does not exercise its rights pursuant to this Section 3.10 in full (such Preemptive Rights Holder, a "**Non-Fully Exercising Preemptive Rights Holder**" and the portion of such Non-Fully Exercising Preemptive Rights Holder's Common Percentage Interest of the Preemptive Rights Interests for which such right was not exercised, the "**Available Securities**"), each Preemptive Rights Holder that has exercised its rights under this Section 3.10 in full (each such Preemptive Rights Holder, a "**Fully Exercising Preemptive Rights Holder**") shall also have the right to purchase its Common Percentage Interest of the Available Securities on the same terms and conditions as offered to any Buyer. Promptly, and in any event within 10 Business Days after it has been determined that there are any Available Securities, the Company shall give written notice to the Fully Exercising Preemptive Rights Holders setting forth the number of Available Securities and such Fully Exercising Preemptive Rights Holder's Common Percentage Interest of such Available Securities. Any Fully Exercising Preemptive Rights Holder must exercise its rights with respect to any Available Securities by delivering written notice to the Company within 10 Business Days after receipt of such notice.

(d) Upon the expiration of the offering periods described above, the Company (or its Subsidiary, as the case may be) shall be entitled to sell such Preemptive Rights Interests which such Preemptive Rights Holders have not elected to purchase during the 60 days following such expiration at a price not less than and on other terms and conditions no more favorable to the Buyer(s) thereof than those offered to such Preemptive Rights Holders. Any Preemptive Rights Interests offered or sold by the Company (or its Subsidiary, as the case may be) after such 60-day period must be reoffered in accordance with the terms of this Section 3.10.

(e) The obligations set forth in this Section 3.10 shall not apply to the following issuances of Preemptive Rights Interests by the Company or any of its Subsidiaries: (i) Equity Interests of the Company or any of its Subsidiaries issued in connection with any merger, consolidation, acquisition of assets or businesses or similar transaction that has been approved in accordance with the terms of this Agreement; (ii) Equity Interests issued by a Subsidiary of the Company to the Company or another wholly owned Subsidiary of the Company; (iii) Membership Interests issued in connection with any issuance of indebtedness of the Company or its Subsidiaries to Third Parties; (iv) Equity Interests offered to the public pursuant to a registration statement filed under the Securities Act, including pursuant to an IPO; (vi) Equity Interests issued pursuant to the Management Incentive Plan (collectively, "**Exempted Securities**").

(f) If any regulatory approval, including the filing and the expiration of any waiting period under any Law, is required prior to the issuance of any Preemptive Rights Interests (assuming the exercise of the rights of the Preemptive Rights Holders under this Section 3.10), the Company (or its Subsidiary, as the case may be) shall not issue such Preemptive Rights Interests until such approval has been obtained (or, if applicable, the filing has been completed and such waiting period has expired). The Company and the Members shall use their commercially reasonable efforts to comply promptly with all applicable regulatory requirements in connection with the issuance of Preemptive Rights Interests by the Company and the purchase thereof by any Preemptive Rights Holder exercising such Preemptive Rights Holder's rights pursuant to this

Section 3.10; *provided, however*, that no Member or Affiliate of a Member shall be required to divest any assets in order to comply with such regulatory requirements.

(g) Notwithstanding anything to the contrary in this Agreement, the observance of any provision of this Section 3.10 may be waived (either generally or in a particular instance and either retroactively or prospectively) by Unanimous Consent; *provided, however*, that none of the provisions of this Section 3.10 applicable to an Initial Member or the rights of an Initial Member as a Preemptive Rights Holder hereunder may be amended, altered, waived, or otherwise modified under any circumstances without the prior written consent of such Initial Member.

3.11 Management Incentive Plan. Within 60 days of the date hereof, in accordance with the Plan, the Board shall approve and adopt (a) a Management Incentive Plan containing such terms and conditions as determined by the Board, acting in good faith (the "**Approved MIP**"), and (b) form of award agreements pursuant to which Equity Interests of the Company may be granted or issued to employees, directors, managers and other Persons providing services to the Company and its Subsidiaries, as determined by the Board (the "**Award Agreements**"). Notwithstanding anything contained in this Agreement to the contrary, but subject to the applicable terms of the Plan and Section 6.3(b)(ix), neither (i) the adoption of the Approved MIP by the Company (or any Award Agreements pursuant to which Equity Interests of the Company may be issued pursuant thereto) nor (ii) the issuance of any Equity Interests of the Company pursuant thereto shall require the consent or approval of any Person other than the Board.

3.12 EIG Monitoring Agreement. The Board and each of the Members acknowledge, agree and consent to (a) the execution by the Company of the EIG Monitoring Agreement, which EIG Monitoring Agreement shall be binding on and enforceable against the Company in accordance with its terms, and (b) the performance by the Company of its obligations pursuant to the EIG Monitoring Agreement, subject to the terms and conditions of the EIG Monitoring Agreement and Section 6.3(b)(vii).

ARTICLE IV
CAPITAL CONTRIBUTIONS

4.1 Capital Contributions; Return of Cash.

(a) *General*. Notwithstanding anything to the contrary herein, no Member shall be required to make any Capital Contributions to the Company, except as otherwise agreed to in writing by such Member.

(b) Capital Calls.

(i) After the Effective Date, the Board may, in its sole discretion, determine that additional Capital Contributions are necessary for the conduct of the Company's business and for legitimate business purposes determined in good faith (any such additional Capital Contributions called from the Common Members by the Board, being hereinafter referred to as an "**Additional Call Amount**"). In that event, the Common Members (including holders of additional Equity Interests issued by the Company which are designated as Common Units) shall have the option (but not the obligation), to participate in such additional Capital

Contributions in accordance with their Common Percentage Interest. To the extent less than all of the Common Members elect to make an additional Capital Contribution, those Common Members that do elect to make an additional Capital Contribution shall have the option (but not the obligation) to increase their additional Capital Contributions pro rata in accordance with their respective Common Percentage Interests such that the total of the additional Capital Contribution equals the Additional Call Amount. Unless otherwise determined by the Board, the funding of any such Additional Call Amount shall be made no later than 30 Business Days following a Common Member's receipt of a capital call notice in respect of such Additional Call Amount; *provided*, that in no event shall such amounts be required to be funded to the Company sooner than 15 Business Days following receipt of such capital call notice.

(ii) Upon the funding of any Capital Contribution by a Common Member pursuant to Section 4.1(b)(i) above, such Common Member shall be issued a number of additional Common Units (or additional Equity Interests issued by the Company), as applicable, equal to the amount of the Capital Contribution made by such Common Member in respect of such Capital Contribution *divided by* a price per Common Unit determined by the Board. Exhibit A and the books and records of the Company shall be thereafter amended accordingly. For the avoidance of doubt, Section 3.10 shall not apply to any issuance of Common Units or Equity Interests pursuant to this Section 4.1(b).

(c) *Initial Membership Capital Contribution*. The Initial Members shall be treated for U.S. federal income tax purposes as making a Capital Contribution of their portion of the underlying assets of the Company at the time they became Members.

4.2 Capital Accounts. The Company shall maintain for each Member a separate Capital Account with respect to each class or series of interests owned by the Member in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv) and in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by (i) the amount of all Capital Contributions made (or deemed made) to the Company by such Member pursuant to this Agreement (net of any liabilities assumed by the Company in connection with such Capital Contributions and any liabilities to which any property comprising such Capital Contributions is subject), and (ii) all Net Profit or items of Company income and gain allocated with respect to such Member pursuant to Section 5.1, and decreased by (x) the amount of cash or Agreed Value of property actually or deemed distributed to such Member pursuant to this Agreement (net of liabilities assumed by such Member and the liabilities to which such property is subject), and (y) all Net Loss or items of Company deduction allocated to such Member pursuant to Section 5.1.

(b) For purposes of computing the amount which is to be allocated pursuant to Article V and is to be reflected in the Members' Capital Accounts, "**Net Profit**" and "**Net Loss**" shall mean the Company's taxable income or loss for federal income tax purposes; *provided*, that:

(i) Any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account in computing Net Profit and Net Loss pursuant to this definition of "Net Profit" and "Net Loss" shall be added to such taxable income or loss.

(ii) All fees and other expenses incurred by the Company to promote the sale of (or to sell) a Membership Interest that can neither be deducted nor amortized under section 709 of the Code, if any, shall, for purposes of Capital Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred.

(iii) Except as otherwise provided in Treasury Regulation section 1.704-1(b)(2)(iv)(m), the computation of Net Profit and Net Loss shall be made without regard to any election under section 754 of the Code which may be made by the Company and, as to those items described in section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(iv) If the Carrying Value of any asset (other than Depletable property) differs from its adjusted tax basis for U.S. federal income tax purposes, any gain or loss resulting from a disposition of such asset, and any depreciation, amortization or cost recovery deduction with respect to such asset, shall be calculated with reference to such Carrying Value.

(v) In the event that an adjustment to the Carrying Value of the assets of the Company occurs pursuant to Section 4.2(d), any Unrealized Gain or Unrealized Loss shall be treated as having been actually realized.

(vi) Gain resulting from any disposition of a Depletable Property with respect to which gain is recognized for U.S. federal income tax purposes shall be treated as being equal to the corresponding Simulated Gain.

(c) A Transferee shall succeed to the pro rata portion of the Capital Account of the transferor relating to the Membership Interest so Transferred. Except as otherwise provided herein, all items of income, gain, expense, loss, deduction, and credit allocable to any Membership Interest that may have been Transferred during any calendar year shall, if permitted by law, be allocated between the transferor and the Transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, based upon the interim closing of the books method or such other method as agreed between the transferor and the Transferee; *provided*, *however*, that this allocation must be made in accordance with a method permissible under section 706 of the Code and the Treasury Regulations thereunder.

(d) In accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(f), (i) on an issuance of additional Membership Interests for cash or Contributed Property, (ii) immediately prior to any actual or deemed distribution to a Member of any Company property (other than a distribution of cash that is not in redemption or retirement of a Membership Interest), or (iii) upon the occurrence of any other event provided in such Treasury Regulation, the Capital Accounts of all Members and the Carrying Value of each Company property immediately prior to such issuance or adjustment shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as if such Unrealized Gain or Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance or adjustment and had been allocated to the Members at such time pursuant to Section 5.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated; *provided, however*, that such adjustments shall be made only if the Board in good faith determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and Fair Market Value of all Company assets (including cash and cash equivalents) immediately prior to the event triggering such adjustment shall be determined by the Board using such method of valuation as it may adopt. The Board shall allocate such aggregate value among the assets of the Company (in such manner as it determines) to arrive at a Fair Market Value for individual properties.

4.3 Contributions of Contributed Property. Unless otherwise determined by the Board, all future Capital Contributions shall be made in readily available cash funds. Unless otherwise determined by the Board, to the extent that any subsequent Capital Contribution is made in the form of Contributed Property, any costs or expenses associated with the transfer, assignment, conveyance or recordation of such Contributed Property, including any taxes in respect thereof, shall be borne by the Member making such contribution, and any such costs or expenses, whether paid directly by the Member or reimbursed to the Company, shall not be deemed Capital Contributions.

ARTICLE V
ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations for Capital Account Purposes. For purposes of maintaining the Capital Accounts, the Company's Net Profit and Net Loss shall be allocated among the Members in each taxable year (or portion thereof) as provided herein below.

(a) *General*. Except as otherwise provided in this Agreement, Net Profit or Net Loss for a Fiscal Year shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 5.1(b), the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Section 10.2(d)(ii) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 10.2(d)(ii) to the Members immediately after making such allocation *minus* (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets; *provided*,

however, that the allocations pursuant to this Section 5.1(a) may be adjusted to the extent the Board determines that such adjustment is necessary to comply with the provisions of section 704(b) of the Code and the Treasury Regulations thereunder and the other relevant provisions of this Agreement.

(b) *Special Allocations*. Notwithstanding any other provision of this Section 5.1, the following special allocations shall be made for such taxable period in the following order and priority:

(i) *Company Minimum Gain Chargeback*. Notwithstanding the other provisions of this Section 5.1, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be allocated items of Company income and gain for such taxable period (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(f)(6) and (g)(2) and section 1.704-2(j)(2)(i), or any successor provisions. This Section 5.1(b)(i) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt*. Notwithstanding the other provisions of this Section 5.1 (other than Section 5.1(b)(i)), except as provided in Treasury Regulation section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Fiscal Year shall be allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. This Section 5.1(b)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset*. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation sections 1.704-1(b)(2)(ii)(d)(4) through (6), items of Company income and gain (including Simulated Gain) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under section 704(b) of the Code, the deficit balance, if any, in such Member's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; *provided*, that an allocation pursuant to this Section 5.1(b)(iii) shall be made only if and to the extent that such Member would have a deficit in such Member's Adjusted Capital Account after all other allocations provided in this Article V have been tentatively made as if this Section 5.1(b)(iii) were not a part of this Agreement. This Section 5.1(b)(iii) is intended to be a "qualified income offset" as that term is used in Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) *Stop Loss*. No amount of loss or deduction shall be allocated pursuant to Section 5.1(a) to the extent that such allocation would cause any Member to have a deficit balance in its Adjusted Capital Account at the end of such Fiscal Year (or increase any existing deficit balance in its Adjusted Capital Account). All loss and deductions in excess of the limitation set forth in the preceding sentence shall be allocated among such other Members, who have positive Adjusted Capital Account balances, in proportion thereto until each Member's Adjusted Capital Account balance is reduced to zero.

(v) *Gross Income Allocations*. In the event any Member has a deficit balance in its Capital Account at the end of any Fiscal Year in excess of the amount such Member is deemed obligated to restore pursuant to Treasury Regulations sections 1.704-2(g) and 1.704-2(i)(5), such Member shall be specially allocated items of Company gross income, gain and Simulated Gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 5.1(b)(v) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account after all other allocations provided in this Section 5.1 have been tentatively made as if this Section 5.1(b)(v) and Section 5.1(b)(iii) were not in the Agreement.

(vi) *Nonrecourse Deductions*. Nonrecourse Deductions for any taxable period shall be allocated to the Members in accordance with their relative Common Percentage Interests.

(vii) *Member Nonrecourse Deductions*. Member Nonrecourse Deductions for any Fiscal Year shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to such Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, such Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) *Nonrecourse Liabilities.* For purposes of Treasury Regulation section 1.752-3(a)(3), the Members agree that Nonrecourse Liabilities of the Company in excess of the sum of (A) the amount of Company Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members in accordance with their relative Common Percentage Interests.

(ix) *Curative Allocation*. Notwithstanding any other provision of this Section 5.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss or deduction allocated to each Member pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Member under the Agreed Allocations had the Required Allocations and

the related Curative Allocations not otherwise been provided in this Section 5.1. It is the intention of the Members that allocations pursuant to this Section 5.1(b)(ix) be made among the Members in a manner that is likely to minimize economic distortions.

(x) *Simulated Depletion*. Simulated Depletion for each Depletable Property, and Simulated Loss upon the disposition of a Depletable Property, shall be allocated among the Members in proportion to their shares of the Simulated Basis in such property.

(c) *Allocations on Liquidation*. Notwithstanding any other provisions of this Article V, after taking into account the special allocations in Section 5.1(b), in the year in which the Company liquidates pursuant to Article X and all subsequent years (and for any prior years with respect to which the due date (without regard to extensions) for the filing of the Company's federal income tax return has not passed as of the date of the liquidation), all items of income, gain, loss and deduction of the Company shall be allocated among the Members in a manner reasonably determined by Board as shall cause to the nearest extent possible the Capital Account of each Member to equal the amount to be distributed to such Member pursuant to Section 10.2(d)(ii).

5.2 Allocations for Tax Purposes.

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 5.1.

(b) Notwithstanding any provisions contained herein to the contrary, solely for federal (and applicable state and local) income tax purposes, items (including deemed items) of income, gain, depreciation, amortization, gain or loss with respect to property for which a Book-Tax Disparity exists, shall be allocated in a manner that seeks to eliminate the variation between the Company's tax basis in such property and its Carrying Value, and such allocations shall be made in accordance with the "remedial method" provided in Treasury Regulations section 1.704-3(d).

(c) For the proper administration of the Company, the Board shall adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions.

(d) All items of income, gain, loss, deduction and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to the election under section 754 of the Code that will be made by the Company; *provided*, *however*, that such allocations, once made, shall be adjusted (in any manner determined by the Board) as necessary or appropriate to take into account those adjustments permitted or required by sections 734 and 743 of the Code.

5.3 Income Tax Allocations with Respect to Depletable Properties.

(a) Cost and percentage depletion deductions with respect to any Depletable Property shall be computed separately by the Members rather than the Company pursuant to Section 613A(c)(7)(D) of the Code. Except as otherwise required by Section 704(c) of the Code (which for the avoidance of doubt shall be applied using the method specified for the relevant asset under Section 5.2(b)) and Treasury Regulation Section 1.613A-3(e)(5), for purposes of such computations, the federal income tax basis of each Depletable Property shall be allocated to each Member pro rata, in accordance with the such Member's Common Percentage Interest as of the time such Depletable Property is acquired by the Company (and any additions to such federal income tax basis resulting from expenditures required to be capitalized in such basis shall be allocated among the Members in a manner designed to cause the Members' proportionate shares of such adjusted federal income tax basis to be in accordance with their proportionate Common Percentage Interests as determined at the time of any such additions) and shall be reallocated among the Members pro rata, in accordance with the Members' Common Percentage Interests as determined immediately following the occurrence of an event giving rise to an adjustment to the Carrying Values of the Company's Depletable Properties pursuant to Section 4.2(d). The Company shall inform each Member of such Member's allocable share of the federal income tax basis of each Depletable Property promptly following the acquisition of such Depletable Property by the Company, any adjustment resulting from expenditures required to be capitalized in such basis, and any reallocation of such basis as provided in the previous sentence, together with such other information that a Member may reasonably request in connection with the Member's (or its direct or indirect owner) obligation to file its U.S. federal, state or local income tax returns.

(b) For purposes of the separate computation of gain or loss by each Member on the taxable disposition of Depletable Property, the amount realized from such disposition shall be allocated (i) first, to the Members in an amount equal to the Simulated Basis in such Depletable Property in proportion to their allocable shares thereof and (ii) second, any remaining amount realized shall be allocated consistent with the allocation of Simulated Gains.

(c) The allocations described in this Section 5.3 are intended to be applied in accordance with the Members' "interests in partnership capital" under Section 613A(c)(7)(D) of the Code; *provided*, that the Members acknowledge and agree that special allocations of federal income tax basis, income, gain, deduction or loss, as computed for U.S. federal income tax purposes, shall be applied in order to eliminate differences between Simulated Basis and adjusted federal income tax basis with respect to Depletable Properties in accordance with the "remedial method" provided in Treasury Regulations section 1.704-3(d) (or otherwise in such manner as is consistent with the principles of Section 5.2(b)). The provisions of this Section 5.3(c) and the other provisions of this Agreement relating to allocations under Code Section 613A(c)(7)(D) are intended to comply with Treasury Regulations Section 1.704-1(b)(4)(v) and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

(d) Each Member, with the assistance of the Company, shall separately keep records of its share of the adjusted tax basis in each Depletable Property, adjust such share of the adjusted tax basis for any cost or percentage depletion allowable with respect to such property and use such adjusted tax basis in the computation of its cost depletion or in the computation of its gain or loss on the disposition of such property by the Company. Upon the request of the Company, each Member shall advise the Company of its adjusted tax basis in each Depletable Property and any depletion computed with respect thereto, both as computed in accordance with the provisions

of this subsection for purposes of allowing the Company to make adjustments to the tax basis of its assets as a result of certain transfers of interests in the Company or distributions by the Company. The Company may rely on such information and, if it is not provided by the Member, may make such reasonable assumptions as it shall determine with respect thereto.

(e) The Simulated Basis of each Depletable Property shall be allocated to each Member pro rata, in accordance with the Members' Common Percentage Interests as of the time such Depletable Property is acquired by the Company (and any additions to such Simulated Basis resulting from expenditures required to be capitalized in such Simulated Basis shall be allocated among the Members in a manner designed to cause the Members' proportionate shares of such Simulated Basis to be in accordance with their Common Percentage Interests at the time of any such additions) and shall be reallocated among the Members pro rata, in accordance with the Members' Common Percentage Interests as determined immediately following the occurrence of an event giving rise to an adjustment to the Carrying Values of the Company's Depletable Properties pursuant to Section 4.2(d).

5.4 Requirement of Distributions.

(a) Unless otherwise prohibited under the Act, distributions of assets and properties of the Company shall be made by the Company at such times and in such amounts as determined by the Board in its sole discretion out of the Available Cash of the Company. Distributions of assets and properties other than cash and cash equivalents shall be based upon the Fair Market Value of the applicable assets or properties and in accordance with the terms of this Section 5.4 as if such assets and properties were cash or cash equivalents equal to their Fair Market Value. Distributions of cash shall be made to the Members by wire transfer of immediately available funds to the account designated in writing by the relevant Member. Any distribution pursuant to this Section 5.4(a) or Section 5.4(b) shall be made to the Common Members pro rata in accordance with the Common Members' respective Common Percentage Interests.

(b) Notwithstanding the foregoing:

(i) Subject to the provisions of Section 5.4(a), and subject to any restrictions contained in any agreement to which the Company is bound (including any loan, financing or similar document), the Board may in its sole discretion (exercised in good faith) cause the Company to distribute Available Cash on or prior to each April 15, June 15, September 15 and December 15 (each an "**Estimated Tax Payment Date**"), with respect to the taxable period related to such Estimated Tax Payment Date (each, an "**Estimated Tax Period**" under the corporate estimated tax payment rules), to each Member, pro rata in accordance with the Members' respective Common Percentage Interests, to enable the Member with the highest Tax Liability to receive, in such pro rata distribution, cash sufficient to pay such Tax Liability. "**Tax Liability**" shall mean (A) the *product of* (1) the amount of net taxable income allocable to such Member pursuant to Section 5.2 for the current Estimated Tax Period and all prior Estimated Tax Periods and (2) an assumed tax rate equal to the highest maximum combined marginal federal, state and local income tax rates applicable to a corporate taxpayer organized under

the laws of New York, *minus* (B) all prior distributions previously made by the Company to such Member pursuant to this Section 5.4.

(ii) Distributions pursuant to this Section 5.4(b) shall be treated as advances against, and shall reduce, any Member's entitlement to any subsequent distributions made pursuant to Section 5.4(a) or Section 10.2(d)(ii).

5.5 Withholding. To the extent the Company is required by Law to withhold or to make tax payments (including penalties, additions to tax or interest imposed with respect to such taxes) on behalf of or with respect to any Member or attributable to the status of any Member (including Company Level Taxes) ("**Tax Advances**"), the Company may withhold such amounts or make such tax payments as so required. All Tax Advances made on behalf of a Member shall be repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member pursuant to Section 5.4(a) or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member or, at the discretion of the Board, by requiring such Member promptly to reimburse the Company. If at the time of liquidation of the Company, any such Tax Advances to a Member exceed the proceeds of liquidation to the Member, such Member shall promptly repay such excess to the Company. If a distribution to a Member is actually reduced as a result of a Tax Advance, for all other purposes of this Agreement such Member shall be treated as having received the full amount of the distribution unreduced by the Tax Advance. Each Member shall provide the Company (including any Member who ceases to be a Member) with such information that the Company reasonably requests in order to determine the amount of any taxes required to be withheld with respect to such Member. Each Member of the Company hereby agrees to indemnify and hold harmless the Company and the other Member's from and against any liability from such Member's failure to repay Tax Advances. Whenever the Company is to pay any sum to any Member, the Company may, before payment, deduct from such sum any amounts that such Member owes the Company that are due or past due.

ARTICLE VI
MANAGEMENT OF THE COMPANY

6.1 Management by Managers. The Company shall be managed by a board of managers (the "**Board**", each member of the Board, a "**Manager**" and such members collectively, the "**Managers**") which Board shall collectively act as the "manager" of the Company (as such term is used in the Act), according to this Article VI and, except with respect to certain consent requirements required by the Act or provided in this Agreement, no Member, by virtue of having the status of a Member, shall have any management power or control over the business and affairs of the Company or actual or apparent authority to enter into contracts on behalf of, or to otherwise bind, the Company, and the Members shall not have any control over the day-to-day operation or management of the Company or its Subsidiaries. Except as described in the preceding sentence, (a) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Board in accordance with this Agreement and (b) the Board shall exercise such powers in compliance with this Agreement and ensure that all organizational formalities are observed with respect to the Company. Under the direction of the Board, certain activities of the Company may be conducted on the Company's behalf by the Officers as specified and authorized by the Board, who shall be agents of the

Company, and the management and administration of the day-to-day business and affairs of the Company will be provided by such Officers, subject to the operating guidelines and annual and quarterly budgets established and approved by the Board. In addition to the powers that now or hereafter can be granted under the Act and to all other powers granted under any other provision of this Agreement, the Board shall have (subject to the Act and all consent rights and other limitations in this Agreement) full power and authority to do all things on such terms as they may deem necessary or appropriate to conduct, or cause to be conducted, the business and affairs of the Company. Any Person dealing with the Company, other than a Member or a Member's Affiliate, may rely on the authority of the Board or the Officers in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance with it, regardless of whether that action actually is taken in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, each Member hereby (i) specifically delegates to the Board its rights and powers to manage and control the business and affairs of the Company, and (ii) waives its right to bind the Company, in each case as, and to the extent permitted by, the Act, except in each case with respect to certain consent requirements required by the Act or provided in this Agreement, including Section 6.3(b).

6.2 Board.

(a) *Composition*. Except as otherwise set forth herein:

(i) The Board shall consist of up to five natural persons, none of whom need be Members or residents of the State of Delaware.

(ii) EIG shall have the right to appoint up to three Managers (each, an "**EIG Manager**") for so long as EIG holds Common Units.

(iii) (A) IntermediateCo (so long as IntermediateCo owns a number of Tema Common Units that satisfies the Tema Board Threshold) or, (B) if IntermediateCo does not own a number of Tema Common Units that satisfies the Tema Board Threshold as of the relevant time of determination but one or more Tema Qualified Transferees exists, such Tema Qualified Transferee(s), as applicable, shall have the right to appoint one Manager (the "**Tema Manager**"); *provided*, that, (x) in no event shall there be more than one Tema Manager at any given time, (y) if there exists more than one Tema Qualified Transferee at the relevant time of determination, the right to appoint the Tema Manager shall be the exclusive right of the Tema Qualified Transferee with the highest Common Percentage Interest as of such time and (z) if neither IntermediateCo nor a Tema Qualified Transferee is permitted to appoint the Tema Manager pursuant to this Section 6.2(a)(iii), EIG shall have the option (but not obligation) to appoint the Tema Manager who shall, from and after such appointment, be deemed an EIG Manager for all purposes of this Agreement.

(iv) (A) EIG, in its sole discretion, or (B) so long as IntermediateCo or Tema and its Affiliates collectively hold a number of Tema Common Units that represent, in the aggregate, a Common Percentage Interest equal to 2.00% or more, EIG and IntermediateCo or Tema or its Affiliates, pursuant Section 3.4(h), jointly

and in good faith, shall have the right to appoint one Manager (the "**Independent Manager**").

The names of the Managers as of the Effective Date are set forth on Schedule 6.2.

(b) Each Manager may vote by delivering such Manager's written proxy to another Manager, or, if a Manager is unable to attend a meeting (in person or telephonically), the Member which appointed such Manager shall have the right to appoint another Person to serve in such Manager's place at such meeting (in person or telephonically). A Manager shall serve until such Manager resigns or is removed as provided in Section 6.6.

6.3 Powers of the Board.

(a) Subject to Section 6.3(b), the Board (and any Officer or committee duly authorized by the Board) shall have the power, right and authority to take all actions by Majority Consent which the Board deems necessary, useful or appropriate for the management and conduct of the Company's business or to the accomplishment of the purposes of the Company, except in each case with respect to certain consent requirements required by the Act or as expressly provided in this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, none of the Company or its Subsidiaries shall take any of the following actions without the approval of (w) IntermediateCo, (x) the Tema Manager (solely to the extent IntermediateCo or a Tema Qualified Transferee has the right to appoint the Tema Manager), (y) EIG and (z) the EIG Managers holding a majority of the votes allocated to the EIG Managers:

(i) Authorize, create, sell or issue any Membership Interests (or other Equity Interests), including any securities convertible into or exercisable or exchangeable for Membership Interests (or other Equity Interests), other than the creation, authorization, sale or issuance of Membership Interests that are not pari passu or senior (and shall be junior and subordinated in all respects) to the Common Units or other Equity Interests owned by IntermediateCo or any Tema Qualified Transferee other than (x) Equity Interests that constitute Preemptive Rights Interests and are otherwise sold or issued following compliance by the Company with Section 3.10 or are Exempted Securities or (y) Membership Interests sold or issued in accordance with the terms of the Approved MIP;

(ii) sell or issue any Debt Securities, including any securities convertible into or exercisable or exchangeable for Debt Securities to (A) any Member or, (B) if EIG is not a Member as of the relevant time of determination but EIG or its Affiliates own Debt Securities as of such time, EIG, in each case other than Debt Securities that constitute Preemptive Rights Interests and are sold or issued following compliance by the Company with Section 3.10;

(iii) purchase, redeem or otherwise acquire or retire any Equity Interests of the Company, other than any such purchase, redemption or acquisition of Equity Interests (A) pursuant to which the Company acquires Equity Interests from all Members on a pro rata basis, (B) pursuant to the terms of the Approved MIP (which

does not circumvent the immediately preceding clause (A)), or (C) by the Company pursuant to Section 3.7;

(iv) enter into or approve any amendment, alteration, or change to, or waiver of, or modification of, any provisions of this Agreement or the Certificate or any other organizational or governing documents or any of the rights, powers, preferences, or privileges of the Membership Interests (or other Equity Interests) owned by IntermediateCo, in each case that materially and adversely affects the rights, powers, preferences, privileges or obligations of, or related to, any of the Membership Interests (or other Equity Interests) owned by IntermediateCo in a manner different from, or with a disproportionate impact, relative to EIG with respect to such class of equity securities; *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 6.3(b)(iv); *provided, further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11;

(v) enter into or approve any amendment, alteration or change to, or waiver of, or modification of, the rights, powers, preferences, privileges or obligations of any Membership Interests (or other Equity Interests) owned (i) by EIG or any of its Affiliates, (ii) issued after the date hereof following compliance with Section 3.10 and (iii) with respect to which IntermediateCo did not exercise its preemptive rights pursuant to Section 3.10 in connection with the issuance thereof that (or would) materially and disproportionately adversely affects the rights, powers, preferences, privileges or obligations of any Membership Interests (or other Equity Interests) owned by IntermediateCo;

(vi) other than in connection with a transaction that constitutes a Change of Control or an IPO, cause the Company to elect to change its tax classification to be classified as an association taxable as a corporation for federal income tax purposes, or convert the business form of the Company;

(vii) other than the EIG Monitoring Agreement (which shall not be subject to this Section 6.3(b)(vii), but shall be subject to Section 6.3(b)(viii)), enter into, amend, restate, supplement, or modify any transaction, document, instrument, or agreement between (x) EIG or any of its Affiliates, on the one hand, and (y) the Company or any of its Subsidiaries, on the other hand, unless (i) the terms of such transaction, document, instrument, or agreement are at least as favorable to the Company or its Subsidiaries, in all material respects, as would have been obtained from a Third Party in a comparable arms' length transaction, or (ii) such transaction, document, instrument, or agreement constitutes a sale or issuance of Preemptive Rights Interests or Exempted Securities by the Company in compliance with Section 3.10; *provided*, that if the Company or the relevant Subsidiary thereof receives a letter or opinion (in each case in writing) from a Qualified Financial Advisor to the effect such transaction, document, instrument, or agreement is fair,

from a financial point of view, to the Company or such Subsidiary (and on other terms as favorable to the Company or such Subsidiary, in all material respects, as would have been obtained from a Third Party in a comparable arms' length transaction), then such letter or opinion shall be deemed conclusive evidence that such transaction, document, instrument, or agreement is on arm's-length terms;

(viii) amend, restate, supplement, or modify any material or economic provision of the EIG Monitoring Agreement or any provision relating to the payment of monies (including any amendment, restatement, supplement or modification that has the effect of increasing the fees paid or payable by the Company or any of its Subsidiaries pursuant to the EIG Monitoring Agreement);

(ix) sell or issue any Membership Interests issued or issuable pursuant to the Approved MIP to EIG or any of its Affiliates (or any of their respective officers, directors, employees, consultants or holders of Equity Interests or debt securities);

(x) consummate a transaction (including a merger, consolidation, amalgamation or other business combination) (i) pursuant to which assets and/or Equity Interests of the Company and/or any of its Subsidiaries are acquired by EIG or any of its Affiliates (or the Company and/or any of its Subsidiaries is merged or combined with EIG or any of its Affiliates), in a manner that results in a Change of Control and (ii) in respect of which more than 10% of the value of the consideration payable to the Company or the Members, as applicable, is in cash; *provided*, that, for the avoidance of doubt, other than the EIG Monitoring Agreement (which shall not be subject to this Section 6.3(b)(x), but shall be subject to Section 6.3(b)(viii)), in no event shall this Section 6.3(b)(x) be deemed to restrict or otherwise limit the ability of the Company to enter into, amend, restate, supplement, or modify any transaction, document, instrument, or agreement between (x) EIG or any of its Affiliates, on the one hand, and (y) the Company or any of its Subsidiaries, on the other hand, in each case to the extent such transaction, document instrument or agreement is approved in accordance with Section 6.3(b)(vii);

(xi) consummate a recapitalization, refinancing or similar transaction if the proceeds that are payable to the Common Members in respect of the Common Units following such recapitalization, refinancing or similar transaction are or will be distributed on a basis other than on a pro rata basis among all Common Members based on each such Common Member's Common Percentage Interest; or

(xii) enter into any agreement or arrangement to do any of the foregoing.

6.4 Meetings of the Board.

(a) Regular meetings of the Board shall be held at least once each calendar quarter, at such times and places as may be determined by the Board. Special meetings of the Board may be called by any of the Managers. Each Member shall use commercially reasonable

efforts to cause its designated Managers to attend (in person or telephonically) each regular or special meeting of the Board.

(b) Notice of the time and place of any regular meeting of the Board shall be in accordance with the meeting schedule approved by the Board or by providing notice at least three days but no more than 30 days prior to the meeting. Special meetings of the Board may be called by providing at least 48 hours' notice prior to the meeting. Special meetings of the Board to deal with emergencies (*i.e.*, exigent circumstances) may be called by providing at least 24 hours' notice prior to the meeting, so long as each Manager provides written confirmation of receipt of notice or waives notice (including by attending (in person or telephonically) the Emergency meeting). Written notice of meetings of the Board, including the purpose of the meeting, shall be given to each Manager with the notice of the meeting. Any Manager may waive notice of any meeting by the execution of a written waiver prior or subsequent to such meeting. The attendance of a Manager at any meeting (in person or telephonically) shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board, need be specified in the waiver of notice of such meeting. Notice may be given by electronic mail to an electronic mail address provided in writing by a Manager, by facsimile to a facsimile number provided in writing by a Manager, by personal delivery or by national reputable courier service such as Federal Express or United Parcel Service to an address specified in writing by a Manager.

(c) The Board may adopt whatever rules and procedures relating to its activities as it may deem appropriate, *provided*, that such rules and procedures shall not be inconsistent with or violate the provisions of this Agreement or the Act, *provided, further*, that such rules and regulations shall permit Managers to participate in meetings by telephone or video conference or the like or by written proxy, and such participation shall be deemed attendance for purposes of determining whether a quorum is present.

(d) All meetings of the Board shall be presided over by the Chairman of the Board, who shall be selected by EIG. At each meeting, the Chairman of the Board may designate a Person to be the acting secretary of such meeting and any such Person shall make a written record of the proceedings of such meeting.

6.5 Quorum and Voting.

(a) At all meetings of the Board, the presence of a majority of the Managers (including at least one EIG Manager and the Tema Manager) shall be necessary and sufficient to constitute a quorum of the Board for the transaction of business; *provided*, that the presence of the Tema Manager shall not be necessary to constitute a quorum at a meeting of the Board to the extent that (i) the absence of the Tema Manager at the meeting of the Board called immediately previously to such meeting caused the Board to fail to reach a quorum at such previously-called meeting and (ii) such previous (and current) meeting was called in accordance with the provisions of Section 6.4.

(b) All actions and approvals of the Board shall be approved and passed at a meeting at which a quorum is present by Majority Consent, except in each case with respect to

certain consent requirements required by the Act or provided in this Agreement, including in Section 6.3(b). In the event Majority Consent is required to approve and pass an action, but such Majority Consent is not obtained because of a tie, the Chairman of the Board shall be entitled to cast an additional vote, which vote will determine the resolution of the proposed action or approval.

(c) Any Manager may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate with each other.

(d) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the number of Managers required to approve such action if a meeting of the Board were to be called pursuant to this Article VI. Each written consent shall bear the date and signature of each Manager who signs the consent. A copy of such written consent shall be promptly provided (within five days of such executed consent) to the Managers.

6.6 Resignation; Removal and Vacancies.

(a) Any Manager may resign at any time by giving written notice to the Board. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. If any Manager is the subject of civil or criminal charges instituted by a Governmental Authority based upon allegations of breach or violation of securities Laws or the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, or is indicted, convicted or enters a plea of no contest or nolo contendere to any felony, then such Manager shall immediately resign from the Board or the Member(s) who appointed such Manager shall immediately remove such Manager from serving as a Manager and shall appoint another Person to fill the vacancy on the Board resulting from such Manager's removal.

(b) Any Manager may be removed at any time, with or without cause, by (and only by) the Member which appointed such Manager.

(c) The removal of a Manager shall be effective only upon delivery of notice thereof to the remaining Managers. Any vacancy in the number of Managers occurring for any reason shall be filled promptly by the appointment of a new Manager by the Person(s) entitled to fill such vacancy. The appointment of a new Manager is effective upon delivery of notice thereof or at such time as shall be specified in such notice to the remaining Managers.

6.7 Discharge of Duties; Reliance on Reports.

(a) None of the Managers or any of their respective Affiliates, employees, agents or representatives shall, in their capacity as such, owe or be deemed to owe any fiduciary duty to the Company or any of its Subsidiaries or any of the Members (other than in the case of the Managers, to the Members appointing such Managers) and none of the Members or any of their respective Affiliates, employees, agents or representatives shall, in their capacity as such, owe or be deemed to owe any fiduciary duty to the Company or any of its Subsidiaries or any of the other Members, in each case it being understood that all such fiduciary duties are hereby fully and irrevocably eliminated to the maximum extent permitted by applicable Law.

(b) Each Manager may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the Board. The Board may consult with legal counsel, accountants, appraisers, consultants, investment bankers and other consultants and advisers selected by it and any act taken or omitted in good faith reliance upon the opinion of such Persons as to matters that the Managers reasonably believe to be within such Person's professional or expert competence shall be conclusively presumed to have been done in good faith and in accordance with such opinion. Neither the Board nor any individual Manager shall be responsible or liable to the Company or any Member for any mistake, action, inaction, misconduct, negligence, fraud or bad faith on the part of any Person delivering such document, advice or opinion as provided in this Section 6.7 unless, with respect to an individual Manager only, such Manager had knowledge that such Person was acting unlawfully or engaging in willful misconduct, gross negligence, bad faith or fraud.

6.8 Officers. Under the direction of the Board, certain administrative activities of the Company shall be conducted on the Company's behalf by the Officers, who shall be agents of the Company.

(a) The officers of the Company shall be such officers as the Board deems necessary (the "**Officers**"). The Officers shall be appointed by the Board. The Officer appointees as of the Effective Date are listed on Schedule 6.8. The Officers shall report to the Board as requested from time to time.

(b) The Board may appoint such other Officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

(c) The authority of any Officers of the Company shall be restricted to those actions specifically authorized by the Board in accordance with this Agreement. On the Effective Date, the Officers shall be authorized to execute this Agreement and any agreement related to the transactions contemplated hereby on behalf of the Company.

(d) Subject to any applicable employment agreement, the Officers and employees of the Company shall be required to devote their full business time, attention, skill, and best efforts to the performance of such Officer's or employee's duties and shall not engage in any other business or occupation during such Person's term of officership or employment.

(e) Notwithstanding anything in the contrary in this Agreement, the Officers, in the performance of their duties as such, shall owe to the Company and the Members duties of loyalty, good faith and due care of the type owed by the officers of a corporation to such corporation and its shareholders under the Laws of the State of Delaware.

6.9 Term of Officers.

(a) An Officer shall serve until such Officer resigns, such Officer's term expires or such Officer is removed as provided in Section 6.9(b). Any Officer of the Company may resign at any time by giving written notice to the Board. The resignation of any Officer shall take effect

upon receipt of notice or at such later time as shall be specified in such notice; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

(b) An Officer may be removed from office at any time with or without cause by the Board. If any vacancy shall occur in any office, for any reason whatsoever, then the Board shall have the right to appoint a new Officer to fill the vacancy.

6.10 Compensation and Reimbursement. Without limiting the Company's obligations pursuant to the EIG Monitoring Agreement, the Company shall also reimburse the Managers for all of their respective documented and reasonable out of pocket expenses relating to the Company, including in connection with their preparation for, travel to and from and attendance at Board meetings and any committees thereof; *provided*, that, with respect to the EIG Managers, the Company's reimbursement obligations pursuant to this Section 6.10 shall not be in duplication of amounts paid or payable by the Company pursuant to the EIG Monitoring Agreement

6.11 Member Meetings.

(a) *Location; Quorum; Voting*. To the extent a meeting of the Members is required by Law or this Agreement, Member meetings shall be held at such place within or without the State of Delaware specified in the notice or waivers of notice thereof. Except as provided herein or under applicable Law, the presence of Common Members holding a majority of the Common Percentage Interests of the Membership Interests, present in person or represented by proxy and entitled to vote, shall constitute a quorum at any meeting of the Members for the transaction of business, and the affirmative vote of the Members holding a majority of the Common Units shall constitute the act of the Members. Each Common Member shall be entitled to one vote for each Common Unit held by such Member. A Member may vote at a meeting by a written proxy executed by that Member and delivered to a Manager, Member, or the Secretary. A proxy shall be revocable unless it is stated to be irrevocable.

(b) *Waiver of Notice*. Attendance of a Member at a meeting (in person or telephonically) shall constitute a waiver of notice of such meeting, except where such Member attends the meeting (in person or telephonically) for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) *Action by Written Consent*. Any action required or permitted to be taken at a particular meeting may be taken without a meeting, without notice and without a vote if a consent in writing setting forth the action so taken is signed by a majority of the Members entitled to vote thereon. A copy of such written consent shall be promptly provided (within 5 days) to the Members.

(d) Any action or inaction taken by the Board or the Members shall be subject to the consent requirements required by the Act or provided in this Agreement, including Section 6.3(b).

6.12 Directors' and Officers' Insurance. As of the date hereof (and during the existence of the Company), the Company will obtain (for the Company and its Subsidiaries), and

maintain, a customary directors' and officers' insurance policy pursuant to which each of the Managers and Officers will be named as beneficiaries.

ARTICLE VII
INDEMNIFICATION; LIMITATION OF LIABILITY

7.1 Right to Indemnification. Subject to the limitations and conditions as provided in this Agreement and to the fullest extent permitted by applicable Laws, each Indemnitee who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (a "**Proceeding**"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of such Person's capacity as an Indemnitee (and only in such capacity), shall be indemnified by the Company to the extent such Proceeding relates to such Person's capacity as an Indemnitee (and only in such capacity) to the fullest extent permitted by the Act, as the same exists or may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said Laws permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorneys' and experts' fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article VII shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity under this Agreement for any and all Liabilities and damages related to and arising from such Person's activities while acting in such capacity. Notwithstanding the foregoing, no Person shall be entitled to indemnification under this Section 7.1 if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which such Person is seeking indemnification pursuant to this Section 7.1, (x) such Person's actions or omissions constituted bad faith, an intentional breach of this Agreement, willful misconduct on the part of such Person or fraud or (y) with respect to Officer Indemnitees only, such Officer Indemnitee breached such Officer's duty pursuant to Section 6.8(e) or acted or failed to act in a manner that constitutes gross negligence, bad faith, willful misconduct or fraud. Any indemnification pursuant to this Article VII shall be made only out of the assets of the Company and its Subsidiaries, it being agreed that none of the Members nor any of their Affiliates (other than the Company and its Subsidiaries) shall have any personal liability for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification. The rights granted pursuant to this Article VII shall be deemed contract rights, and no amendment, modification or repeal of this Article VII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. IT IS ACKNOWLEDGED THAT THE INDEMNIFICATION PROVIDED IN THIS Article VII COULD INVOLVE INDEMNIFICATION FOR NEGLIGENCE OR UNDER THEORIES OF STRICT LIABILITY. As used in this Agreement, intentional breach of this Agreement means that the applicable Person knew or should have known that such Person's actions or omissions would result in a breach of this Agreement.

7.2 Indemnification of Officers, Employees (if any) and Agents. The Company may indemnify and advance expenses to Persons who are not entitled to indemnification under Section 7.1, including current and former employees (if any) or agents of the Company, and those

Persons who are or were serving at the request of the Company as a manager, director, officer, partner, member, trustee, employee (if any), agent or similar functionary of another foreign or domestic general partnership, corporation, limited partnership, joint venture, limited liability company, trust, employee (if any) benefit plan or other enterprise against any liability asserted against such Person and incurred by such Person in such a capacity or arising out of such Person's status as such a Person to the same extent that it may indemnify and advance expenses to a Member under this Article VII.

7.3 Advance Payment. Subject to the remaining provisions of this Section 7.3, any right to indemnification conferred in this Article VII shall include a right to be paid or reimbursed by the Company for any and all documented and reasonable fees, costs, and expenses as they are incurred by a Person entitled to be indemnified under Section 7.1 (or a Person for which the Company has elected to indemnify or advance expenses pursuant to Section 7.2) who was, is or is threatened, to be made a named defendant or respondent in a Proceeding (or applicable part of such Proceeding) in advance of the final disposition of the Proceeding (or applicable part of such Proceeding) and without any determination as to such Person's ultimate entitlement to indemnification. Any indemnification or advance of expenses under this Article VII shall be made only against a written request therefor submitted by or on behalf of the Person seeking indemnification or advance. Notwithstanding the foregoing, (a) the payment of such expenses incurred by any such Person in advance of final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of such Person's good faith belief that such Person has met the requirements necessary for indemnification under this Article VII and a written undertaking by or on behalf of such Person to promptly repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article VII or otherwise, in each case pursuant to a non-appealable order from a court of competent jurisdiction and (b) the Company shall not be required to make any advances of expenses to an Officer Indemnitee if a determination is reasonably made by the Board at any time during the course of a Proceeding based on the facts known at the time such determination is made, that such Person breached such Person's duties pursuant to Section 6.8(e), or intentionally breached any other provision of this Agreement or engaged in bad faith, willful misconduct, gross negligence or fraud.

7.4 Appearance as a Witness. Notwithstanding any other provision of this Article VII, the Company shall pay or reimburse expenses incurred by any Person entitled to be indemnified pursuant to this Article VII in connection with such Person's appearance as a witness in a Proceeding so long as such Person is not a party or threatened to be made a party to such Proceeding.

7.5 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article VII shall not be exclusive of any other right which a Person indemnified pursuant to Section 7.1 (or a Person for which the Company has elected to indemnify pursuant to Section 7.2) may have or hereafter acquire under any Laws, this Agreement, or any other agreement or otherwise.

7.6 Insurance. The Company and its Subsidiaries shall purchase and maintain indemnification insurance, at its expense, to protect itself and any other Persons from any

expenses, liabilities, or losses, whether or not such expenses, liabilities or losses may be indemnified under this Article VII.

7.7 Member Notification. To the extent discretionary to the Company, the Board with Majority Consent shall approve or disapprove of indemnification or advancement of expenses under this Article VII. Any indemnification of or advance of expenses to any Person entitled or authorized to be indemnified under this Article VII shall be reported in writing to the Board with or before the notice or waiver of notice of the next Board meeting or with or before the next submission to the Board of a consent to action without a meeting and, in any case, within the twelve (12) month period immediately following the date the indemnification or advance was made. Notwithstanding the foregoing, no failure to comply with the notification provisions of this Section 7.7 shall operate to deprive a Person of any indemnification or advancement of expenses to which such Person would otherwise be entitled.

7.8 Savings Clause. If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless any Person entitled to be indemnified pursuant to this Article VII as to fees, costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the fullest extent permitted by Laws.

7.9 Scope of Indemnity. For the purposes of this Article VII, references to the "Company" include all constituent entities, whether corporations or otherwise, absorbed in a consolidation or merger as well as the resulting or surviving entity. Thus, any Person entitled to be indemnified or receive advances under this Article VII shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving entity as such Person would have if such merger, consolidation, or other reorganization never occurred.

7.10 Other Indemnities.

(a) The Company acknowledges and agrees that certain Indemnitees may have rights to indemnification, advancement of expenses or insurance provided by Persons other than the Company. The Company acknowledges and agrees that the obligation of the Company under this Agreement to indemnify or advance expenses to any Indemnitee for the matters covered under this Agreement shall be the primary source of indemnification and advancement of such Indemnitee, and any obligation on the part of any Indemnitee under any Other Indemnification Agreement to indemnify or advance expenses to such Indemnitee shall be secondary to the Company's obligation and shall be reduced by any amount that the Indemnitee may collect as indemnification or advancement from the Company. Notwithstanding the foregoing, any payments made to an Indemnitee by an insurance company shall not be reduced as a result of any indemnification payments made by the Company to such Indemnitee and that such Indemnitee shall not permit any such insurance company to be subrogated to such Indemnitee's rights without the prior written consent of the Board. If the Company fails to indemnify or advance expenses to an Indemnitee as required or contemplated by this Agreement, and any Person makes any payment to such Indemnitee in respect of indemnification or advancement of expenses under any Other Indemnification Agreement on account of such Unpaid Indemnity Amounts, such other Person

shall be subrogated to the rights of such Indemnitee under this Agreement in respect of such Unpaid Indemnity Amounts and shall be third party beneficiaries with rights to enforce this Section 7.10.

(b) The Company, as an indemnifying Party from time to time, agrees that, to the fullest extent permitted by applicable Law, its obligation to indemnify Indemnitees under this Agreement shall include any amounts expended by any other Person under any Other Indemnification Agreement in respect of indemnification or advancement of expenses to any Indemnitee in connection with any Proceedings to the extent such amounts expended by such other Person are on account of any Unpaid Indemnity Amounts.

7.11 Liability of Indemnitees.

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Company or any of its Subsidiaries, the current or former Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement, for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, (i) the Indemnitee's acts or omissions constituted bad faith, an intentional breach of this Agreement, willful misconduct or fraud, (ii) the Indemnitee's acts or omissions were criminal or (iii) in the case of a current or former Officer (in such Officer's capacity as such), the Person breached such Person's duties pursuant to Section 6.8(e) or acted or failed to act in a manner that constituted gross negligence, willful misconduct, bad faith or fraud.

(b) The Board may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it under this Agreement either directly or by or through its agent or agents, and the Board shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the Board in good faith with Majority Consent, unless the Manager approving such action or inaction had knowledge of such misconduct or negligence.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company or any of its Subsidiaries, the current or former Members, any Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement, any Indemnitee acting in connection with the Company's or any of its Subsidiaries' business or affairs shall not be liable, to the fullest extent permitted by Law, to the Company or any of its Subsidiaries, to any current or former Member, to any other Person who acquires an interest in a Membership Interest or to any other Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Agreement or any provision of this Agreement shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Agreement as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(e) Notwithstanding anything in this Agreement to the contrary:

(i) nothing in this Article VII shall (A) limit or waive any claims against, actions, rights to sue, other remedies or other recourse the Company or any of its Subsidiaries, any Member or any other Person may have against any Indemnitee for a breach of contract claim relating to any binding agreement to which such Indemnitee is a party (including, where applicable, this Agreement and any claim, action, suit or other remedy or recourse with respect to any failure by any Member to make a Capital Contribution required to be made by (and agreed in writing to be made by) such Member to the Company pursuant to this Agreement), other than, for the avoidance of doubt, any claim, action, suit or other remedy or recourse with respect to a breach of this Agreement by an Officer Indemnitee, current or former Manager (or as a member of a committee of the Board) or current or former Partnership Representative, in each case, solely in their respective capacities as such, which claim, action, suit or other remedy or recourse shall remain subject to the terms of this Article VII or (B) entitle any such Indemnitee to be indemnified or advanced expenses with respect to such a breach;

(ii) nothing in this Article VII shall entitle any Officer Indemnitee to indemnification or advancement of expenses under this Agreement with respect to any Proceeding initiated by or on behalf of (A) such Officer Indemnitee (other than a Proceeding by such Officer Indemnitee (x) to enforce such Officer Indemnitee's rights under this Agreement or (y) to enforce any other rights of such Officer Indemnitee to indemnification or advancement of expenses from the Company under any other agreement or at Law), including any counterclaims defended by such Officer Indemnitee in connection with any such Proceeding, unless the initiation of such Proceeding, or making of such claim, shall have been approved by the Board with Majority Consent or (B) the Company or any of its Subsidiaries against the Officer Indemnitee for breach of this Agreement; and

(iii) nothing in this Article VII shall apply to taxes other than any excise or similar taxes that represent losses, claims, damages, or similar arising from any non-tax claim by the Company pursuant to, and in accordance with, the terms and conditions hereunder.

7.12 Replacement of Fiduciary Duties. Notwithstanding any other provision of this Agreement, to the extent that any provision of this Agreement (including Section 7.13) purports or is interpreted (a) to have the effect of replacing, restricting or eliminating the duties that might otherwise, as a result of Delaware or other applicable Law, be owed by the Board or any other Indemnitee to the Company, the Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement or (b) to constitute a waiver or consent by the Company, the Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement to any such replacement, restriction or elimination, such provision shall be deemed to have been approved by the Board with Majority Consent, all of the Members, each other Person who acquires an interest in a Membership Interest and each other Person who is bound by this Agreement.

7.13 Standards of Conduct and Modification of Duties.

(a) Whenever the Board, or any committee of the Board, makes any determination or takes or declines to take any other action or inaction under this Agreement (whether or not qualified with a good faith standard), then, unless another express standard is expressly provided for in this Agreement, the Board, or such committee (as the case may be), shall make such determination or take or decline to take such other action or inaction in good faith and fair dealing and shall not be subject to any higher standard contemplated hereby or under the Act or any other Law or at equity. A determination, other action or failure to act by the Board or any committee of the Board (as the case may be) will be deemed to be in good faith and fair dealing so long as the Board or any such committee uses reasonable business judgment, and, to the extent permitted by applicable Law. In any proceeding brought by the Company, any Member or any Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement challenging such action or inaction, determination or failure to act, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action, inaction or failure to act was not in good faith and fair dealing by clear and convincing evidence. For the avoidance of doubt, the limitations on indemnification, advancement and exculpation of monetary liability shall not be deemed to create or imply any duties or impose any standard of conduct, and in the event of any inconsistency between this Section 7.13 and the other provisions of this Article VII, this Section 7.13 shall govern.

(b) Notwithstanding anything to the contrary in this Agreement, the Board or any other Indemnitee shall have no duty or obligation, express or implied, to sell or otherwise dispose of any asset of the Company or its Subsidiaries.

(c) To the extent that, at law or in equity, a Member (in its capacity as such) owes any duties (including fiduciary duties) to the Company, any other Member or other holder of Membership Interests or any other Person pursuant to applicable Laws or this Agreement, such duty is hereby eliminated to the fullest extent permitted pursuant to Law (including Section 18-1101(c) of the Act), it being the intent of the Members that to the extent permitted by Law and except to the extent another express standard is expressly specified elsewhere in this Agreement, no Member (in its capacity as such) shall owe any duties of any nature whatsoever to the Company, the other Members or any other holders of Membership Interests or any other Person, other than the implied contractual covenant of good faith and fair dealing, and each Member may decide or determine any matter in its sole and absolute discretion taking into account solely its interests and those of its Affiliates (excluding the Company and its Subsidiaries) subject only to the implied contractual covenant of good faith and fair dealing. Except with respect to the express obligations set forth in this Agreement or any other agreement to which any Member is a party, to the maximum extent permitted by applicable Law (including Section 18-1101(e) of the Act), the Company, each Member and each other Person bound by this Agreement hereby waives any claim or cause of action against, and hereby eliminate all Liabilities of, each Member, solely in its capacity as a Member, for any breach of any duty (including fiduciary duties) to the Company, the other Members or any other holders of Membership Interests or any other Person. Nothing in this Agreement is intended to create a partnership, joint venture, agency or other relationship creating fiduciary or quasi-fiduciary duties or similar duties or obligations, or otherwise subject the Members to joint and several liability or vicarious liability or to impose any duty, obligation or liability that would arise therefrom with respect to any or all of the Members or the Company.

(d) Notwithstanding anything in this Agreement to the contrary, and without limiting Section 7.13(c), each of the Company, the Members and each other Person bound by this Agreement agrees that:

(i) none of the Managers (in their capacities as such) shall owe any fiduciary or similar duty or obligation whatsoever to the Company, any Member (other than the Member designated such Manager), any other Manager or any other Person, except to the minimum extent required by any provision of applicable Law that cannot be waived;

(ii) to the extent that, at law or in equity, a Manager (in its capacity as such) owes any duties (including fiduciary duties) to the Company, any Member (other than the Member designating such Manager), any other Manager or any other Person, any such duty is hereby waived and eliminated to the fullest extent permitted pursuant to applicable Law;

(iii) subject to clauses (i) and (ii), each Manager (in its capacity as such) may decide or determine any matter subject to the Board's Consent or approval in the sole and absolute discretion of such Manager, it being the intent of the Company, the Members, each Manager and each other Person bound by this Agreement, that each Manager (in its capacity as such) have the right to make such decisions or determinations solely on the basis of the interests such Manager desires to consider, including such Manager's own interests, the interests of the Member that designated such Member and the interests of such Member's Affiliates (excluding the Company and its Subsidiaries), and that such Manager has no duty or obligation to consider the interests of the Company or its Subsidiaries, any Member, any Manager or any other Person; and

(iv) subject to clauses (i) and (ii), the Company, each Member and each other Person bound by this Agreement hereby waives any claim or cause of action against, and hereby eliminates all Liabilities of, each Manager, solely in its capacity as a Manager, or Member for any breach of any duty (including any fiduciary duty) to the Company, the other Members, or any other holders of Membership Interests or any other Person (other than, for the avoidance of doubt, the Member who appointed such Manager).

(v) to the fullest extent permitted by applicable Law, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any of EIG, the EIG Managers, IntermediateCo, Tema, or the Tema Manager. The Company renounces any interest or expectancy of the Company or any of its Subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to any such Persons (or any of their respective equity holders or Affiliates). Neither EIG, the EIG Managers, IntermediateCo, Tema, or the Tema Manager (or any of their respective equity holders or Affiliates) who acquires knowledge of a potential transaction, agreement, arrangement, or other matter that may be an opportunity for the Company or any of its Subsidiaries, shall have any duty to communicate or offer such opportunity to the Company or any of

its Subsidiaries, and any such Person (or any of their respective equity holders or Affiliates) shall not be liable to the Company or any of its Subsidiaries or to any of the Members or Managers for breach of any fiduciary or other duty by reason of the fact that any such Persons (or any of their respective equity holders or Affiliates) pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Company or any of its Subsidiaries.

ARTICLE VIII
TAXES

8.1 **Tax Returns**. EIG shall, at the Company's expense, have exclusive control over the preparation and filing of all federal, state, local and foreign tax returns of the Company, including the making of any tax determinations or elections (subject to Section 6.3(b)(vi)). IntermediateCo shall have the right, upon its request, to review draft versions of such tax returns reasonably in advance of their filing (to the extent practicable), and EIG shall in good faith consider any comments thereon received from IntermediateCo. Upon request by EIG or the Company, each Member shall furnish to the Company all pertinent information in its possession relating to Company operations that is reasonably necessary to enable the Company's tax returns to be prepared and filed. EIG shall have the right, upon its request, to review draft versions of all federal, state, local and foreign tax returns prepared or required to be filed by IntermediateCo reasonably in advance of their filing (to the extent practicable), and IntermediateCo shall in good faith consider any comments thereon received from EIG.

8.2 **Tax Controversies**.

(a) EIG shall: (i) serve as the "partnership representative" of the Company (the "**Partnership Representative**") for purposes of Section 6223 of the Code and any similar provisions of state, local and foreign Law; (ii) have exclusive authority (1) to represent the Company (at the Company's expense) in connection with all audits or examinations by Tax authorities of the Company's affairs and any Company-related tax items, including resulting administrative and judicial proceedings, (2) to sign consents and to enter into settlements and other agreements with such Tax authorities with respect to any such audits, examinations or proceedings, (3) to expend Company funds for professional services and costs associated therewith, (4) in its sole discretion, determine whether the Company (either in its own behalf or on behalf of the Members) contests or continues to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority, and (5) to make any elections or determinations it may choose regarding the administration of all Tax matters, including any Tax audit, examination or proceeding; and (iii) appoint the "designated individual" of the Company within the meaning of Treasury Regulation section 301.6223-1. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes) will be paid by such Member, and if required to be paid (and actually paid) by the Company, will be recoverable from such Member as provided in Section 5.4.

(b) Each Member hereby agrees to (i) take such actions as may be required to effect EIG's designation as the Partnership Representative or the designation of the designated individual, (ii) provide any information and take such actions as may be requested by the

Partnership Representative in order to determine whether any Company Level Taxes may be modified pursuant to the Partnership Tax Audit Rules, (iii) upon the request of the Partnership Representative, take such action as may be necessary to modify or otherwise reduce the amount of any proposed or potential Company Level Taxes, and (iv) upon the request of the Partnership Representative, take such other actions as may be required to effect any election or procedure under the Partnership Tax Audit Rules.

(c) The Company shall promptly, following the written request of the Partnership Representative, reimburse the Partnership Representative (and any other Person properly acting as the "partnership representative" or "designated individual" for any period or periods) for any and all expenses (including legal and accounting fees, claims, liabilities, losses and damages) incurred by the Partnership Representative.

8.3 Tax Matters.

(a) The Company and each of its Members (i) shall treat the Company as a new partnership for U.S. federal (and applicable state and local) income tax purposes formed by EIG and IntermediateCo in a transaction described in Revenue Ruling 99-5, Situation 2, following the confirmation of the Plan, (ii) shall treat IntermediateCo, for U.S. federal (and applicable state and local) income tax purposes, as the continuation or successor partnership of Rosehill Operating Company, LLC (as it existed prior to the Contribution), and (iii) shall not take any position in any audit, proceeding, examination, return or statement, in each case, relating to taxes, that is inconsistent with or contrary to any of the foregoing clauses (i) or (ii).

(b) On the date hereof or as soon as practicable thereafter, each Member shall provide the Company with a properly executed and completed IRS Form W-9 (or applicable IRS Form W-8).

(c) IntermediateCo shall, at its sole expense, have the right to copies of any material correspondence received from taxing authorities in respect of audits of the income tax returns of the Company.

(d) EIG shall, at its sole expense, have the right to copies of any material correspondence received from taxing authorities in respect of audits of the income tax returns of IntermediateCo.

(e) Without limiting of any of EIG's rights and authorities under the foregoing provisions of this Article VIII: (i) EIG and IntermediateCo shall cooperate fully, as and to the extent reasonably requested by the other, in exchanging information or documents and in keeping each other reasonably and timely informed, in each case, in connection with (A) the filing of tax returns or the Company or IntermediateCo and (B) any audit, examination or proceeding with respect to taxes of the Company or IntermediateCo; and (ii) such cooperation shall include (A) the retention and (upon the other's request) the provision of records and information which are reasonably relevant to any such audit and (B) making employees available on a mutually convenient basis to provide additional information and explanation of any related material provided pursuant to this paragraph (e).

ARTICLE IX
BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

9.1 Maintenance of Books. The Company shall keep books and records of accounts (including a list of the names, addresses, Capital Contributions and Membership Interests of all Members) and shall keep minutes of the proceedings of the Board. The books of account for the Company shall be maintained on an accrual basis in accordance with the terms of this Agreement and GAAP, except that the Capital Accounts of the Members shall be maintained in accordance with Section 4.2. The accounting year of the Company shall be the Fiscal Year. Section 18-305(a) of the Act (entitled "Access to and Confidentiality of Information; Records") shall not apply or be incorporated into this Agreement and the Members hereby waive any rights under such sections of the Act, in each case other than with respect to the Initial Members.

9.2 Tax Information. The Company shall deliver to each of its Members the following schedules and tax returns:

(a) within 150 days after the Company's Fiscal Year end, a final Schedule K-1; and

(b) within 60 days after the end of each fiscal quarter of the Company, estimated tax reporting information with respect to such fiscal quarter.

9.3 Accounts. The Officers or designated Members of the Company shall establish and maintain one or more separate bank and investment accounts and arrangements for the Company's funds in the Company's name with financial institutions and firms that the Board may determine. The Company may not commingle the Company's funds with the funds of any other Person except for any Subsidiary of the Company. All such accounts shall be and remain the property of the Company and all funds shall be received, held and disbursed for the purposes specified in this Agreement.

9.4 Financial Statements and Reports. The Company shall deliver, which delivery may be made via Intralinks or a comparable online data system, to (a) each Member which, with its Affiliates, holds at least 5% of the Common Units (other than any Membership Units issued pursuant to the Management Incentive Plan) (*provided*, that for purposes of the foregoing, each Member and its Affiliates shall not be deemed to hold less than 5% of the Common Units if such Member and its Affiliates hold less than such amount as a result of the issuance of Exempted Securities), (b) any Third Party acquirer under Section 3.7; *provided*, that a proposed Third Party acquirer shall be required to execute a confidentiality agreement reasonably acceptable to the Board prior to receiving any information or access thereto pursuant to this Section 9.4, and (c) any Person to whom any Initial Member who has rights under clause (a) or any of its Affiliates is proposing to encumber or otherwise pledge Common Units in connection with obtaining any financing from such Person with respect to an Initial Member or any of its Affiliates; *provided*, that such Person shall be required to execute a confidentiality agreement reasonably acceptable to the Board prior to receiving any information or access thereto pursuant to this Section 9.4;

(a) within 120 days after the end of each Fiscal Year, (i) audited consolidated financial statements of income and cash flows of the Company and its Subsidiaries for such Fiscal

Year, (ii) an audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and (iii) a reserve report audited or prepared by a third party. The annual statements required under clauses (i) and (ii) shall be prepared by an independent accounting firm designated by the Board and in accordance with GAAP;

(b) within 60 days of the end of any fiscal quarter (for the first three fiscal quarters of the Company's Fiscal Year), quarterly consolidated financial statements of the Company and its Subsidiaries for the previous quarter prepared in accordance with GAAP (*provided*, that the footnotes associated with such financial statements are not required to conform to GAAP, and such statements may be subject to normal year-end adjustments);

(c) simultaneously with delivery to the Board, the Company's annual budget for each of the Company's Fiscal Year;

(d) upon the reasonable request by the Member, such additional schedules as are needed by such Member to prepare its financial statements in accordance with GAAP; *provided* that any incremental out-of-pocket expenses incurred by the Company in connection with the preparation or delivery of such schedules shall be borne by such Member.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

10.1 Dissolution. Subject to the provisions of Section 10.2 and any applicable Laws, the Company shall wind up its affairs and dissolve only on the first to occur of the following (each a "**Dissolution Event**"):

(a) approval of dissolution pursuant to Unanimous Consent;

(b) the consummation of a sale of all or substantially all of the assets of the Company (not in connection with a Change in Control); or

(c) entry of a decree of judicial dissolution of the Company in accordance with the Act.

Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company will not terminate until the assets of the Company have been liquidated and the assets distributed as provided in Section 10.2 and the Certificate has been canceled.

10.2 Liquidation and Termination. In connection with the winding up and dissolution of the Company, EIG shall act as a liquidator ("**Liquidator**"), unless otherwise determined by the Board. The Liquidator shall proceed diligently to wind up the affairs of the Company in an orderly manner and make final distributions as provided herein and in the Act. The Liquidator shall use commercially reasonable efforts to complete the liquidation of the Company as soon as practicable (and within one year after an applicable Dissolution Event); *provided*, that such period may be extended for up to an additional one-year period by the Board. The costs of liquidation shall be borne as a Company expense (including the costs and expenses of the Liquidator, in its capacity as such). Until final distribution, the Liquidator shall continue to operate the Company properties

for a reasonable period of time to allow for the sale of all or a part of the assets thereof pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). The steps to be accomplished by the Liquidator are as follows:

(a) as promptly as possible after approval of the winding up and dissolution of the Company and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities, and operations through the last day of the calendar month in which the winding up and dissolution is approved or the final liquidation is completed, as applicable;

(b) the Liquidator shall cause any notices required by applicable Law to be sent to each known creditor of and claimant against the Company in the manner described by applicable Law;

(c) upon approval of the winding up and dissolution of the Company, the Liquidator shall, unless otherwise determined by the Board, be prohibited from distributing assets in kind and shall instead sell for cash the equity of the Company or the assets of the Company at the best price available (pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). The property of the Company shall be liquidated as promptly as is consistent with obtaining the Fair Market Value thereof. The Liquidator may sell all of the Company property, including to one or more of the Members (pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). If any assets are sold or otherwise liquidated for value, the Liquidator shall proceed as promptly as practicable in a commercially reasonable manner to implement the procedures of this Section 10.2(c); and

(d) subject to the terms and conditions of this Agreement any applicable Law (including the Act), the Liquidator shall distribute the assets of the Company in the following order of priority:

(i) *First*, the Liquidator shall pay, satisfy or discharge from Company assets all of the debts, liabilities and obligations of the Company, or otherwise make adequate provision for payment, satisfaction and discharge thereof; *provided*, *however*, that such payments shall not include any Capital Contributions described in Article IV or any other obligations of the Members created by this Agreement; and

(ii) *Second*, all remaining assets of the Company shall be distributed to the Members in accordance with Section 5.4(a).

(e) All distributions to the Members pursuant to Section 10.2(d)(ii) shall be in the form of cash, unless the Board otherwise determines.

(f) When the Liquidator has complied with the foregoing liquidation plan, the Liquidator (or the Board), on behalf of all Members, shall execute, acknowledge and cause to be filed a certificate of cancellation pursuant to the Act.

10.3 Provision for Contingent Claims.

(a) The Liquidator shall make a reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, actually known to the Company but for which the identity of the claimant is unknown; and

(b) If there are insufficient assets to both pay the creditors pursuant to Section 10.2 and to establish the provision contemplated by Section 10.3(a), subject to applicable Law, the claims shall be paid as provided for in accordance to their priority, and, among claims of equal priority, ratably to the extent of assets therefor.

10.4 Deficit Capital Accounts. Notwithstanding anything contained in this Agreement or any custom or rule of law to the contrary, no Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company.

ARTICLE XI
AMENDMENT OF THE AGREEMENT

11.1 Amendments to be Adopted by the Company. Each Member agrees that an appropriate Manager or Officer of the Company, in accordance with and subject to the limitations contained in Article VI, may execute, swear to, acknowledge, deliver, file and record whatever documents may be required to reflect:

(a) a change in the name of the Company in accordance with this Agreement, the location of the principal place of business of the Company or the registered agent or office of the Company which has been approved by the Board;

(b) admission or substitution of Members whose admission or substitution has been made in accordance with this Agreement;

(c) a change that the Board believes is reasonable and necessary or appropriate to qualify or continue the qualification of the Company as a limited liability company under the Laws of any state or that is necessary or advisable in the opinion of the Board to ensure that the Company will not be taxable as a corporation for federal income tax purposes; and

(d) an amendment that is necessary, in the opinion of counsel, to prevent the Company or its Officers from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, whether or not substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor.

11.2 Amendment Procedures.

(a) Except as provided in Section 11.1, subject to Section 6.3(b) and the other limitations contained in Article VI, all amendments, waivers or modification, to this Agreement must be in writing and signed by each of the Members holding collectively a Common Percentage Interest of at least 51%; *provided, however*, that:

(i) any amendment, modification, alteration, or change of any of the rights of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as

the case may be) set forth in Section 6.3(b) (or any of the provisions of Section 1.3 or any definitions, in each case to the extent related thereto) shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be);

(ii) other than in connection with the immediately preceding clause (i), any amendment, modification, alteration, or change of this Agreement that nullifies or overrides the express rights, obligations or liabilities of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) hereunder shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be);

(iii) other than in connection with the immediately preceding clause (i) or clause (ii), any amendment, alteration, or change to, or waiver of, or modification of, any provisions of this Agreement or any of the rights, powers, preferences, or privileges of the Membership Interests (or other Equity Interests) owned by IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) in each case that materially and adversely affects the rights, powers, preferences, privileges or obligations of, or related to, any of the Membership Interests (or other Equity Interests) owned by IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) in a manner different from, or with a disproportionate impact, relative to EIG or any of its Affiliates who are holders of Equity Interests, shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be); *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 11.2(a)(iii); *provided, further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11; and

(iv) other than in connection with the immediately preceding clause (i), clause (ii), or clause (iii), the Company shall provide IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) with at least five (5) Business Days' prior written notice of the effectiveness of any amendment, modification, alteration, or change of this Agreement that (A) materially or adversely affects the rights, remedies, obligations, or liabilities of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) and (B) does not otherwise require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) pursuant to Sections 11.2(a)(i), 11.2(a)(ii) or 11.2(a)(iii), and during such five (5) Business Day period, EIG (or the Company's majority equity holder at such time) shall be required to consult in good faith with, and reasonably and in good faith take into consideration any reasonable comments or recommendations proposed in good faith by, IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) with respect to the matters set forth in such proposed amendment,

modification, alteration, or change prior to the effectiveness thereof; *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 11.2(a)(iv); *provided*, *further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11.

(b) The rights of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) set forth in Section 11.2(a) are personal to IntermediateCo, Tema and its Affiliates, as applicable, and shall be automatically become null, void, and of no force or effect at such time as none of IntermediateCo, Tema or its Affiliates own any Equity Interests of the Company.

(c) All amendments, waivers or modification to this Agreement will be sent to each Member promptly after the effectiveness thereof.

ARTICLE XII
MEMBERSHIP INTERESTS

12.1 Certificates. Membership Interests shall not be certificated unless otherwise approved by, and subject to the provisions set by the Board.

12.2 Registered Holders. The Company shall be entitled to recognize the exclusive right of a Person registered on its books and records as the owner of the indicated Membership Interest and shall not be bound to recognize any equitable or other claim to or interest in such Membership Interest on the part of any Person other than such registered owner, whether or not it shall have express or other notice thereof, except as otherwise provided by applicable Law; *provided*, *however*, that unless prohibited by applicable securities Laws, this Section 12.2 shall not apply to an Initial Member in the event that such Initial Member or any of its Affiliates encumbers or otherwise pledges Common Units in connection with obtaining any financing with respect to such Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

12.3 Security. For purposes of providing for Transfer of, perfecting a Security Interest in, and other relevant matters related to, a Membership Interest, the Membership Interest will be deemed to be a "security" subject to the provisions of Articles 8 and 9 of the Delaware Uniform Commercial Code and any similar Uniform Commercial Code provision adopted by the State of Delaware or any other relevant jurisdiction.

12.4 Nonvoting Equity Securities. Notwithstanding anything in this Agreement to the contrary, the Company shall not issue any non-voting equity securities as and to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code as in effect on the date of this Agreement; *provided*, *however*, that the foregoing restriction (a) will not have any further force or effect beyond that required under said Section 1123(a)(6), (b) will have such force and effect only for so long as such Section 1123(a)(6) is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

ARTICLE XIII
GENERAL PROVISIONS

13.1 Entire Agreement. This Agreement (including the Exhibits and Schedules attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersede (a) all prior oral or written proposals, term sheets or agreements, (b) all contemporaneous oral proposals or agreements and (c) all previous negotiations and all other communications or understandings between the Members with respect to the subject matter hereof.

13.2 Waivers. Neither action taken (including any investigation by or on behalf of any Party) nor inaction pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained herein by the Party not committing such action or inaction. A waiver by any Member of a particular right, including breach of any provision of this Agreement, shall not operate or be construed as a subsequent waiver of that same right or a waiver of any other right.

13.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legal representatives, successors and permitted assigns.

13.4 Governing Law; Severability.

(a) THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED AND SHALL BE CONSTRUED, INTERPRETED AND GOVERNED PURSUANT TO AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES WHICH, IF APPLIED, MIGHT PERMIT OR REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) In the event of a direct conflict between the provisions of this Agreement and any mandatory provision of the Act or Laws, the applicable provision of the Act or other Laws, as the case may be, shall control. If any provision of this Agreement, or the application thereof to any Person or circumstance, is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by the Act or other Laws, as the case may be.

13.5 Further Assurances. Subject to the terms and conditions set forth in this Agreement, each of the Parties agrees to use all commercially reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement. In case, at any time after the execution of this Agreement, any further action is necessary or desirable to carry out its purposes, the proper authorized officer, directors, managers, or equity holders of the Parties shall take or cause to be taken all such necessary action.

13.6 Exercise of Certain Rights. Except for rights in this Agreement, no Member may maintain any action for partition of the property of the Company.

13.7 Counterparts. This Agreement may be executed in multiple counterparts and delivered by facsimile or electronic transmission (including portable document format), each of

which, when executed, shall be deemed an original, and all of which shall constitute but one and the same instrument binding on all the parties hereto.

13.8 Information. The Members acknowledge that they and their respective appointed Managers shall receive information from or regarding the Company and its Subsidiaries in the nature of trade secrets or that otherwise is confidential information, non-public, and proprietary information (as further defined below in this Section 13.8, "**Confidential Information**"), the release of which could be damaging to the Company or Persons with which the Company conducts business. Each Member shall hold in strict confidence, and shall require that such Member's appointed Managers hold in strict confidence, any Confidential Information that such Member or such Member's appointed Managers, and each Member shall not, and each Member shall require that such Member's appointed Managers agree not to, disclose such Confidential Information to any Person other than another Member, Manager, Officer of the Company, or otherwise use such information for any purpose other than to evaluate, analyze, report (to its investors, any Governmental Authorities, or otherwise), and keep apprised of the Company's assets and its interest therein and for the internal use thereof by a Member or its Affiliates, except for disclosures (a) to comply with any Laws (including applicable stock exchange or quotation system requirements), *provided*, that, if permitted by Law, a Member or Manager must notify (to the extent legally permissible) the Company promptly of any disclosure of Confidential Information which is required by Law, and any such disclosure of Confidential Information shall be to the minimum extent required by Law and, (b) to Affiliates, partners, members, equity holders, investors, directors, officers, employees, agents, attorneys, consultants, lenders, professional advisers or representatives of the Member or Manager or their Affiliates (*provided*, that such Member or Manager shall be responsible for assuring such Affiliates' partners', members', equity holders', investors', directors', officers', employees', agents', attorneys', consultants', lenders', professional advisers' and representatives' compliance with the terms hereof, except to the extent any such Person who is not an Affiliate, partner, member, equity holder, director, officer or employee of such Member or Manager has been advised to treat as confidential such Confidential Information, and such Member or Manager, as the case may be, shall be responsible for a breach by any such Persons), or to Persons to which that Member's Membership Interest may be Transferred as permitted by this Agreement, but only if the recipients of such information have agreed to be bound by customary confidentiality undertakings substantially similar to this Section 13.8, (c) of information that a Member also has received from a source independent of the Company and that such Member reasonably believes such source obtained without breach of any obligation of confidentiality to the Company, (d) of information obtained prior to the formation of the Company, *provided*, that this clause (d) shall not relieve any Member or any of its Affiliates from any obligations it may have to any other Member or any of its Affiliates under any existing confidentiality agreement, (e) that have been or become independently developed by a Member, a Manager or its Affiliates or on their behalf without using any of the Confidential Information, (f) that are or become generally available to the public (other than as a result of a prohibited disclosure by such Member or Manager or its representatives), (g) in connection with any proposed Transfer of all or part of a Membership Interest of a Member, or of working interests or other assets received in accordance with this Section 13.8, or the proposed sale of all or substantially all of a Member or its direct or indirect parent, to advisers or representatives of the Member, its direct or indirect parent or Persons to which such interest may be Transferred as permitted by this Agreement, but only if the recipients of such information have agreed to be bound by customary undertakings with respect to confidential and proprietary information similar to this Section 13.8 or (h) to the extent

the Company shall have consented to such disclosure in writing. The Members agree that breach of the provisions of this Section 13.8 by such Member or such Member's appointed Managers could cause irreparable injury to the Company for which monetary damages (or other remedy at Law) would be inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member or Manager to comply with such provisions and (ii) the uniqueness of the Company's business and the confidential nature of the Confidential Information. Accordingly, the Members agree that the provisions of this Section 13.8 may be enforced by the Company (or any Member on behalf of the Company) by temporary or permanent injunction (without the need to post bond or other security therefor), specific performance or other equitable remedy and by any other rights or remedies that may be available at law or in equity. The term "**Confidential Information**" shall include any information pertaining to the Company's (or any of its Subsidiaries') business which is not available to the public, whether written, oral, electronic, visual form or in any other media, including such information that is proprietary, confidential or concerning the Company's (or any of its Subsidiaries') ownership and operation of their respective assets or related matters, including any actual or proposed operations or development project or strategies, other operations and business plans, actual or projected revenues and expenses, finances, contracts and books and records. Notwithstanding the foregoing, Members and their respective Affiliates may make disclosures to their direct and indirect limited partners, equity holders and members such information (including Confidential Information) as is customarily provided to current or prospective limited partners in private equity funds sponsored or managed by Affiliates of such Member.

13.9 Liability to Third Parties. Except as required by applicable Law or as otherwise expressly provided herein, no Member shall be liable to any Person (including any Third Party, the Company or to another Member) (a) as the result of any act or omission of a Manager or another Member or (b) for Company losses, liabilities or obligations (except as otherwise expressly agreed to in writing by such Member or as a result of such Member having made available to the Company, for its proportionate share equal to its Membership Interest, such Member's insurance program (commercial, self-funded, self-insured or other similar programs)).

13.10 No Third Party Beneficiaries. Except as set forth in Sections 3.4, 3.5, 3.6, 3.7, 11.1, 11.2 and 13.14 and Article VII, the provisions of this Agreement are for the exclusive benefit of the Members and the Company and their respective successors and permitted assigns and, solely with respect to Article VII, the indemnified Persons described therein. Except for the foregoing, this Agreement is not intended to benefit or create rights in any other Person or Governmental Authority, including (a) any Person or Governmental Authority to whom any debts, liabilities or obligations are owed by the Company or any Member, or (b) any liquidator, trustee or creditor acting on behalf of the Company, and no such creditor or any other Person or Governmental Authority shall have any rights under this Agreement, including rights with respect to enforcing the payment of Capital Contributions.

13.11 Notices. Except as otherwise provided in this Agreement to the contrary, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) emailed to the recipient (*provided*, that no undeliverable message is received by the sender) or (c) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), in each case to the applicable address set forth below:

(a) if to the Company:

Rosehill Operating Company, LLC
16200 Park Row, Suite 300
Houston, Texas 77084
Attention: R. Craig Owen; Jennifer L. Johnson
Email: cowen@rosehillres.com; jjohnson@rosehillres.com

with a copy to (which shall not constitute notice):

EIG Management Company, LLC
600 New Hampshire Ave. NW, Suite 1200
Washington, DC 20037
Attention: Kush Mathur
Email: rosehillteam@eigpartners.com;
kush.mathur@eigpartners.com

and

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attention: John Pitts, P.C.
Email: john.pitts@kirkland.com

(b) if to the Members, to each of the Members listed on Exhibit A at the address set forth therein (or set forth in a properly delivered Joinder).

13.12 Disputes.

(a) *Consent to Jurisdiction and Service of Process; Appointment of Agent for Service of Process.* EACH PARTY TO THIS AGREEMENT HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE DELAWARE COURT OF CHANCERY, OR IF, BUT ONLY IF, THE DELAWARE COURT OF CHANCERY DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, THE SUPERIOR COURT OF THE STATE OF DELAWARE, OR IF, BUT ONLY IF, THE SUPERIOR COURT OF THE STATE OF DELAWARE DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, IN EACH CASE LOCATED IN WILMINGTON, DELAWARE, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER SUCH ACTIONS OR PROCEEDINGS ARE BASED IN STATUTE, TORT, CONTRACT OR OTHERWISE), SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY (i) CONSENTS TO SUBMIT ITSELF TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR SUCH ACTIONS OR PROCEEDINGS, (ii) AGREES THAT IT WILL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR

LEAVE FROM ANY SUCH COURT, AND (iii) AGREES THAT IT WILL NOT BRING ANY SUCH ACTION OR PROCEEDING IN ANY COURT OTHER THAN SUCH COURTS. EACH PARTY ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE AND IRREVOCABLE JURISDICTION AND VENUE OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY NON-APPEALABLE JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH ACTIONS OR PROCEEDINGS. A COPY OF ANY SERVICE OF PROCESS SERVED UPON THE PARTIES SHALL BE MAILED BY REGISTERED MAIL TO THE RESPECTIVE PARTY EXCEPT THAT, UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, ANY FAILURE TO MAIL SUCH COPY SHALL NOT AFFECT THE VALIDITY OF SERVICE OF PROCESS. IF ANY AGENT APPOINTED BY A PARTY REFUSES TO ACCEPT SERVICE, EACH PARTY AGREES THAT SERVICE UPON THE APPROPRIATE PARTY BY REGISTERED MAIL SHALL CONSTITUTE SUFFICIENT SERVICE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b) *Waiver of Jury Trial.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THIS AGREEMENT AND THE RELATIONSHIP THAT IS BEING ESTABLISHED UNDER THIS AGREEMENT. EACH PARTY ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF ANY OF THE OTHER PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS.

EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAYBE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13.13 Expenses. Except with respect to certain reimbursements of expenses to which EIG and its Affiliates are entitled pursuant to the Plan, each of the Members shall be responsible for its own fees, costs and expenses (including the fees, costs and expenses of attorneys, consultants, accountants, and other advisors, travel costs and miscellaneous expenses) incurred in connection

with the negotiation, preparation, execution and delivery of this Agreement and any other document or agreement referred to herein or therein. For the avoidance of doubt, the Company shall have no obligation to reimburse any Member for fees, costs and expenses associated with the negotiation, preparation, execution and delivery of this Agreement.

13.14 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement or any document, agreement, or instrument delivered contemporaneously (or in connection) herewith, and notwithstanding the fact that any Member may be a partnership or limited liability company or corporation, each Member hereto, by its acceptance of the benefits of this Agreement, covenants, agrees and acknowledges that no Persons other than the Members shall have any obligation hereunder and that it has no rights of recovery hereunder against, and no recourse hereunder or under any documents, agreements, or instruments delivered contemporaneously herewith or in respect of any oral representations made or alleged to be made in connection herewith or therewith shall be had against, any former, current or future director, officer, agent, Affiliate, manager, assignee, incorporator, controlling Person, equity holder, fiduciary, representative or employee of any Member (or any of their successor or permitted assignees), against any former, current, or future general or limited partner, manager, equity holder or member of any Member (or any of their successors or permitted assignees) or any Affiliate thereof or against any former, current or future director, officer, agent, employee, Affiliate, manager, assignee, incorporator, controlling Person, equity holder, fiduciary, representative, general or limited partner, equity holder, manager or member of any of the foregoing, but in each case not including the Members (each, but excluding for the avoidance of doubt, the Members, a "**Member Affiliate**"), whether by or through attempted piercing of the corporate veil, by or through a claim (whether in tort, contract or otherwise) by or on behalf of such party against the Member Affiliates, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, or otherwise; it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on, or otherwise be incurred by any Member Affiliate, as such, for any obligations of the applicable Party under this Agreement or the transactions contemplated hereby, under any documents or instruments delivered contemporaneously herewith, in respect of any oral representations made or alleged to be made in connection herewith or therewith, or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, such obligations or their creation. Except to the extent otherwise expressly set forth in, and subject in all cases to the terms and conditions of and limitations herein, this Agreement may only be enforced against, and any claim or cause of action of any kind based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the Persons that are expressly named as Parties and then only with respect to the specific obligations set forth herein with respect to such Party. Each Member Affiliate is expressly intended as a third party beneficiary of this Section 13.14.

13.15 Remedies. Except as provided herein, the rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations or remedies otherwise available at Law or in equity. In addition, in the event any Proceeding involving the enforcement of this Agreement or enforcement of the rights or obligations of the Parties hereunder, the successful Member shall be entitled to recover (in addition to any other available remedy) fees, costs and expenses related to enforcing this Agreement, including reasonable and documented out-

of-pocket attorneys' fees and other expenses incurred in connection with such Proceeding (including court costs).

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first set forth in this Agreement.

THE COMPANY:

ROSEHILL OPERATING COMPANY, LLC

By: _____
Name:
Title:

EIG Member:

EIG ENERGY EQUITY AGGREGATOR AGENT (DIREWOLF), INC.

By: EIG Direwolf Equity Aggregator, L.P., its sole stockholder

By: EIG Direwolf GP, LLC, its General Partner

By:_____
Name:
Title:

By:_____
Name:
Title:

FS Member:

FSEP INVESTMENTS, INC.

By: FS Energy and Power Fund, its sole stockholder

By: FS/EIG Advisor, LLC, its investment adviser

By:_____
Name: Richard K. Punches II
Title: Authorized Person

By:_____
Name: Kush Mathur
Title: Authorized Person

INTERMEDIATECO:

ROSE STEM LLC

By:_____
Name:
Title:

Address:
100 Light Street, Suite 2500
Baltimore, MD 21202
Attention:

SOLELY FOR THE PURPOSES OF ACKNOWLEDGING ITS CONSENT TO THE AMENDMENT OF THE EXISTING AGREEMENT, THE ENTRY INTO THIS AGREEMENT AND ITS WITHDRAWAL AS A MEMBER AND AS THE MANAGING MEMBER OF THE COMPANY:

EXISTING MANAGING MEMBER:

ROSEHILL RESOURCES, INC.

By:_____
Name:
Title:

EXHIBIT A

Ownership Information
(as of [●], 2020)

Members	Aggregate Capital Contribution Amount	Common Units	Common Percentage Interests
EIG			
EIG Energy Equity Aggregator Agent (Direwolf), Inc. 600 New Hampshire Ave. NW, Suite 1200 Washington, DC 20037 Attention: Kush Mathur Email: rosehillteam@eigpartners.com; kush.mathur@eigpartners.com with a copy to (which shall not constitute notice): Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attention: John Pitts, P.C. Email: john.pitts@kirkland.com	$[●]	[●]	[●]%
FSEP Investments, Inc. 600 New Hampshire Ave. NW, Suite 1200 Washington, DC 20037 Attention: Kush Mathur Email: rosehillteam@eigpartners.com; kush.mathur@eigpartners.com with a copy to (which shall not constitute notice): Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attention: John Pitts, P.C. Email: john.pitts@kirkland.com	$[●]	[●]	[●]%
Rose Stem LLC			
Rose Stem LLC 100 Light Street, Suite 2500	$[●]	[●]	[16.16]%

Baltimore, MD 21202 Attention: [●] Email: [●] with a copy to (which shall not constitute notice): McDermott Will & Emery LLP 333 SE 2nd Avenue, Suite 4500 Miami, Florida 33131-2184 Attention: Frederic L. Levenson			
Totals:	**$[●]**	**[●]**	**100%**

EXHIBIT B

EIG Monitoring Agreement

(See Attached)

EXHIBIT C

Entities Not Deemed Competitors

Each of the following entities, for so long as such entity is an Affiliate of Tema:

Gateway Gathering and Marketing Company

Rosemore, Inc.

Rosemore Holdings, Inc.

Raven Gathering System LLC

Rosemore Investments LLC

Rosemore Midstream LLC

SCHEDULE 6.2

Board of Managers

EIG Managers

Richard K. Punches II

Clayton R. Taylor

Jeannie Powers

Tema Manager

Frank Rosenberg

Independent Manager

To be appointed following the Effective Date

SCHEDULE 6.3(b)(vii)

Qualified Financial Advisors

1. [●]

SCHEDULE 6.8

Officers

David L. French	President and Chief Executive Officer
R. Craig Owen	Senior Vice President and Chief Financial Officer
David Mora	Vice President - Commercial and Reserves
Jennifer L. Johnson	Vice President, General Counsel, Corporate Secretary and Compliance Officer

Exhibit L-1

Blackline of Reorganized ROC LLC Agreement

THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ROSEHILL OPERATING COMPANY, LLC,
A DELAWARE LIMITED LIABILITY COMPANY

Dated as of [●], 2020

THE MEMBERSHIP INTERESTS REFERENCED IN THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES AND THEIR OFFER AND SALE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE MEMBERSHIP INTERESTS WHICH ARE REFERENCED HEREIN MAY NOT BE OFFERED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IF THE OFFER OR SALE HAS BEEN REGISTERED AND/OR QUALIFIED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION AND/OR QUALIFICATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS IS AVAILABLE. THERE IS CURRENTLY NO TRADING MARKET FOR THE MEMBERSHIP INTERESTS, AND IT IS NOT ANTICIPATED THAT ONE WILL DEVELOP. THERE ARE SUBSTANTIAL RESTRICTIONS UPON THE TRANSFERABILITY AND VOTING RIGHTS OF THE MEMBERSHIP INTERESTS SET FORTH HEREIN. NO SALE, TRANSFER OR OTHER DISPOSITION BY A MEMBER OF ITS MEMBERSHIP INTERESTS MAY BE MADE EXCEPT IN ACCORDANCE WITH THE TERMS SET FORTH HEREIN. THEREFORE, MEMBERS MAY NOT BE ABLE TO READILY LIQUIDATE THEIR INVESTMENTS.

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THIRD AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

ROSEHILL OPERATING COMPANY, LLC
a Delaware limited liability company

This Third Amended and Restated Limited Liability Company Agreement of Rosehill Operating Company, LLC, a Delaware limited liability company (the "**Company**"), dated as of [●], 2020 (the "**Effective Date**"), is (a) adopted by the Members (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members. Terms used herein and not otherwise defined shall have the meanings set forth in Article I.

RECITALS:

WHEREAS, the Company was formed as a limited liability company pursuant to the Act by filing a Certificate of Formation (as amended, supplemented or otherwise modified from time to time, the "**Certificate**") filed with the Secretary of State of Delaware on January 6, 2017;

WHEREAS, on December 8, 2017, Rosehill Resources, Inc., a Delaware corporation ("**RRI**"), entered into that certain Second Amended and Restated Limited Liability Company Agreement of the Company (the "**Existing Agreement**") in RRI's capacity as the managing member of the Company pursuant to the Existing Agreement (the "**Existing Managing Member**");

WHEREAS, each of Tema Oil and Gas Company, a Maryland corporation (together with its Affiliates, "**Tema**"), and the EIG Claimants held certain claims against, and interests in, RRI and/or the Company (collectively and together with their respective direct and indirect Subsidiaries, "**Debtors**");

WHEREAS on July 26, 2020, the Debtors filed (i) for chapter 11 protection in the Southern District of Texas (the "**Bankruptcy Court**") in the jointly administered chapter 11 bankruptcy cases under the lead case *In re Rosehill Resources Inc*., Case No. 20-33695 (DRJ), and (ii) the Debtors' joint, prepackaged chapter 11 plan of reorganization (as may be amended, restated, supplemented, or modified from time to time in accordance therewith, the "**Plan**");

WHEREAS, pursuant to the Plan, all property of the Debtors' Estates (as defined in the Plan), except RRI's Equity Interests in the Company, vested in the reorganized Company pursuant to and under the Plan;

WHEREAS, the Plan was confirmed by the Bankruptcy Court on [●], 2020, and, pursuant to the Plan, all of the Equity Interests in the Company (including both RRI's and Tema's Equity Interests) were contributed to Rose Stem LLC, a Delaware limited liability company ("**IntermediateCo**", and such contribution pursuant to the Plan, the "**Contribution**"), and IntermediateCo shall be treated, for U.S. federal (and applicable state and local) income tax

purposes, as a continuation or successor partnership of Rosehill Operating Company, LLC (as it existed prior to the Contribution);

WHEREAS, the Existing Managing Member hereby consents to the amendment and restatement of the Existing Agreement pursuant to this Agreement, and to the withdrawal, effective as of the Effective Date, of the Existing Managing Member as a Member and as the managing member of the Company, as evidenced by their execution of this Agreement solely for the purpose of providing such consent;

WHEREAS, the Parties wish to enter into this Agreement to, among other things, (a) amend and restate the Existing Agreement in its entirety, (b) provide for the withdrawal, as of the Effective Date, of the Existing Managing Member, (c) admit the Members to the Company, (d) provide for the management of the Company, and (e) set forth their respective rights and obligations; and

WHEREAS, following the confirmation of the Plan and the transactions described herein, the Company, for U.S. federal (and applicable state and local) income tax purposes, shall be treated as a new partnership formed by EIG and IntermediateCo in a transaction described in Revenue Ruling 99-5, Situation 2.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby confirmed and acknowledged), the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Specific Definitions. As used in this Agreement, the following terms have the following meanings:

"**Act**" means the Delaware Limited Liability Company Act, and any successor statute, as amended from time to time.

"**Additional Call Amount**" has the meaning set forth in Section 4.1(b)(i).

"**Adjusted Capital Account**" means the Capital Account, with respect to each Member, maintained for such Member as of the end of each taxable year of the Company, (a) increased by any amounts that such Member is obligated to restore under the standards set by Treasury Regulation section 1.704-1(b)(2)(ii)(c) (or is deemed obligated to restore under Treasury Regulation sections 1.704-2(g) and 1.704-2(i)(5)), and (b) decreased by items described in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Property**" means any property the Carrying Value of which has been adjusted pursuant to Section 4.2(d).

"**Affiliate**" means, when used with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person in question; *provided*, that notwithstanding the foregoing, the Members and their Affiliates (other than the Company or any of its Subsidiaries) shall not be considered Affiliates of one another solely by virtue of their ownership or Control of the Company.

"**Agent**" has the meaning set forth in Section 3.6(c).

"**Agreed Allocation**" means any allocation, other than a Required Allocation, of an item of income, gain, loss or deduction pursuant to the provisions of Section 5.1.

"**Agreed Value**" of any Contributed Property means the Fair Market Value of such property at the time of contribution.

"**Agreement**" means this Third Amended and Restated Limited Liability Company Agreement of the Company (including any schedules, exhibits and annexes hereto), as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms and conditions set forth herein.

"**Approved MIP**" has the meaning set forth in Section 3.11.

"**Assignee**" means any Person that acquires an interest in any Membership Interest but has not been admitted as a Member in accordance with the terms of this Agreement.

"**Available Cash**" means, as of any date of determination, the following, without duplication and as determined in the sole discretion of the Board acting in good faith:

(a) all cash, cash equivalent amounts and liquid assets held, collected or received by the Company and its Subsidiaries from any and all sources (other than Capital Contributions and the proceeds of indebtedness for borrowed money) during the applicable Estimated Tax Period, *less*

(b) the costs and expenses paid or payable by the Company and its Subsidiaries and amounts reserved for business forecasts, future cash needs, payment of costs (including capital costs and operating and working capital costs and expenses), applicable taxes and similar amounts, debt service, or other reasonable reserves, in each case pursuant to any operating guidelines and annual and quarterly budgets that may be established and approved by the Board.

"**Award Agreements**" has the meaning set forth in Section 3.11.

"**Bankruptcy Code**" means Title 11 of the United States Code.

"**Bankruptcy Court**" has the meaning set forth in the recitals.

"**Blocker**" means any corporation, or entity taxed as a corporation for U.S. federal income tax purposes, that directly or indirectly through one or more intermediary entities treated as partnerships or disregarded entities for U.S. federal income tax purposes, owns no assets or property other than Membership Interests (and, if applicable, equity interests in any such intermediary entities).

"**Blocker Transfer**" has the meaning set forth in Section 3.6(e).

"**Board**" has the meaning set forth in Section 6.1.

"**Book-Tax Disparity**" means with respect to any item of Contributed Property or Adjusted Property, as of the date of any determination, the difference between the Carrying Value of such Contributed Property or Adjusted Property and the adjusted basis thereof for federal income tax purposes as of such date.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by applicable Law to be closed in New York, New York or Houston, Texas.

"**Buyer**" has the meaning set forth in Section 3.10(a).

"**Capital Account**" means the capital account maintained for each Member pursuant to Section 4.2.

"**Capital Contribution**" means any cash, cash equivalents or the Agreed Value of Contributed Property that a Member contributes to the Company in respect of Common Units.

"**Carrying Value**" means (a) with respect to Contributed Property, the Agreed Value of such property reduced (but not below zero) by all Simulated Depletion, depreciation, amortization and cost recovery deductions charged to the Members' Capital Accounts in respect of such Contributed Property, and (b) with respect to any other Company property, the adjusted basis of such property for federal income tax purposes, all as of the time of determination. Notwithstanding the foregoing, the Carrying Value of any property shall be adjusted from time to time in accordance with Section 4.2(d) to reflect changes, additions or other adjustments to the Carrying Value of Company properties, as deemed appropriate by the Board.

"**Certificate**" has the meaning set forth in the Recitals.

"**Change of Control**" means the occurrence of any of the following: (a) the consummation of any transaction (including any merger, consolidation or Transfer of Common Units) the result of which is that one or more Third Parties (other than a Subsidiary of the Company or a Person that was a Member as of the Effective Date) become the beneficial owner, directly or indirectly, of more than 50% of the Common Units; (b) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the Company's assets and the assets of its Subsidiaries, taken as a whole, to one or more Third Parties; *provided*, *however*, that none of the circumstances in this clause (b) shall be a Change of Control if the Persons that beneficially own more than five percent (5%) of the Common Units immediately prior to the

transaction own, directly or indirectly, equity interests with a majority of the total voting power of all of the issued and outstanding equity interests of the surviving entity or transferee Person immediately after the transaction; or (c) the Company consolidates with, or merges with or into, any Third Party or any such Third Party consolidates with, or merges with or into, the Company, in either case, pursuant to a transaction in which any of the Company's issued and outstanding equity interests or the equity interests of such other Third Party is converted into or exchanged for cash, securities or other property.

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

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Member**" means all Members holding Common Units, including upon any Transfer of Common Units permitted by this Agreement.

"**Common Percentage Interest**" means, as of any date with respect to any Common Member, a percentage equal to (a) the aggregate number of Common Units owned by such Member as of such date divided by (b) the aggregate number of all Common Units issued and outstanding as of such date (excluding, for the avoidance of doubt, any Membership Interests issued pursuant to the Management Incentive Plan).

"**Common Units**" has the meaning set forth in Section 3.1(a).

"**Company**" has the meaning set forth in the Preamble.

"**Company Level Taxes**" means all taxes, penalties and interest payable under the Partnership Tax Audit Rules by the Company or any fiscally transparent entity in which the Company owns an interest.

"**Company Minimum Gain**" has the meaning given the term "partnership minimum gain" in Treasury Regulation section 1.704-2(b)(2) and the amount of which shall be determined in accordance with the principles of Treasury Regulation section 1.704-2(d).

"**Competitor**" means any person that directly or indirectly, through one or more affiliates, (a) actively engages in or (b) has equity commitments or capital available to it for purposes of engaging in, the exploration, development, production, gathering, processing, storing, transporting or marketing of oil, natural gas or natural gas liquids in competition with the Company onshore in North America, as determined by the Board in good faith; *provided*, *however*, Tema and the entities set forth on Exhibit C shall not be deemed "Competitors" for purposes of this Agreement.

"**Confidential Information**" has the meaning set forth in Section 13.8.

"**Consent**" means the affirmative valid consent of the indicated party (including the Board or any committee thereof) to the action requested, whether by an affirmative vote of the required number of Managers at a duly called and convened meeting of the Board where a quorum is present or the execution of a written consent by the required number of Managers, in

either case in accordance with the terms hereof and any applicable requirements of the Act, in each case subject to Section 6.3(b).

"**Contributed Property**" means each property or other asset, including equity interests, in such form as may be permitted by the Act, but excluding cash, contributed to the Company. Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.2(d), such property shall no longer constitute a Contributed Property, but shall be deemed an Adjusted Property.

"**Contribution**" has the meaning set forth in the Recitals.

"**Control**" (including its derivatives and similar terms) means possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of any such relevant Person by ownership of voting interest, by contract or otherwise.

"**Curative Allocation**" means any allocation of an item of income, gain, deduction or loss pursuant to the provisions of Section 5.1(b)(ix).

"**Debt Securities**" has the meaning set forth in Section 3.10(a).

"**Debtors**" has the meaning set forth in the Recitals.

"**Depletable Property**" means each separate oil and gas property as defined in Code Section 614.

"**Dissolution Event**" has the meaning set forth in Section 10.1.

"**Economic Risk of Loss**" has the meaning set forth in Treasury Regulation section 1.752- 2(a).

"**Effective Date**" has the meaning set forth in the Recitals.

"**EIG**" means, collectively, the EIG Member and the FS Member. For the avoidance of doubt, each reference to EIG set forth in this Agreement shall be interpreted as a reference to each of the EIG Member and the FS Member on a several and not joint basis (other than with respect to the rights set forth in Section 6.2(a)(iii), which rights shall be exercisable jointly by the EIG Member and the FS Member), and in no event shall any reference to EIG be deemed to create any obligation or Liability for the EIG Member with respect to the obligations or Liabilities of the FS Member as set forth in this Agreement (or vice versa).

"**EIG Claimants**" means, collectively, EIG Energy Fund XVI, L.P., EIG Energy Fund XVI-B, L.P., EIG Energy Fund XVI-E, L.P., EIG Holdings Partnership (Direwolf), L.P., EIG XVI Holdings Partnership (Direwolf), L.P., EIG-Gateway Direct Investments (Direwolf), L.P., EIG-Keats Energy Partners, L.P. and FS Energy and Power Fund.

"**EIG Manager**" has the meaning set forth in Section 6.2(a)(ii).

"**EIG Member**" means EIG Energy Equity Aggregator Agent (Direwolf), Inc., a Delaware corporation, in its capacity as agent and nominee for Direwolf Equity Aggregator, L.P., a Delaware limited partnership.

"**EIG Monitoring Agreement**" means that certain Monitoring Fee Agreement, dated as of the date hereof, by and between EIG Management Company, LLC, a Delaware limited liability company, and the Company, in the form attached hereto as Exhibit B.

"**Eligible Holder**" means a Person qualified to hold an interest in oil and gas leases on federal lands. As of the date hereof, Eligible Holder means: (a) a citizen of the United States; (b) a corporation organized under the laws of the United States or of any state thereof; (c) a public body, including a municipality; or (d) an association of United States citizens, such as a partnership or limited liability company, organized under the laws of the United States or of any state thereof, but only if such association does not have any direct or indirect foreign ownership, other than foreign ownership of stock in a parent corporation organized under the laws of the United States or of any state thereof. For the avoidance of doubt, onshore mineral leases or any direct or indirect interest therein may be acquired and held by aliens only through stock ownership, holding or control in a corporation organized under the laws of the United States or of any state thereof.

"**Eligible Holder Certification**" means a properly completed certificate in such form as may be specified by the Board by which a Member or Assignee certifies that such Member or Assignee (and if such Member or Assignee is a nominee holding for the account of another Person, that to the best of such Member's or Assign's knowledge such other Person) is an Eligible Holder.

"**Emergency**" means any sudden or unexpected event that causes, or risks causing, imminent physical damage to the assets of the Company, or death or injury to any Person, or damage to the environment, which is of such a nature that a response cannot, in the reasonable discretion of any Officer (exercised in good faith), await the decision of the Board.

"**Equity Interests**" means, with respect to any Person, all Common Units, other common interests, preferred interests or other equity interests of such Person, all securities, directly or indirectly, convertible into or exercisable or exchangeable for Common Units, other common interests, preferred interests or other equity interests of such Person, and all options, warrants and other rights to purchase or otherwise, directly or indirectly, acquire from such Person's shares of Common Units, other common interests, preferred interests or other equity interests of such Person, or securities convertible into or exercisable or exchangeable for shares of Common Units, common interests, preferred interests or other equity interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"**Estimated Tax Payment Date**" has the meaning set forth in Section 5.4(b)(i).

"**Estimated Tax Period**" has the meaning set forth in Section 5.4(b)(i).

"**Exempted Securities**" has the meaning set forth in Section 3.10(e).

"**Existing Agreement**" has the meaning set forth in the Recitals.

"**Existing Managing Member**" has the meaning set forth in the Recitals.

"**Exit Members**" has the meaning set forth in Section 3.6(a).

"**Exit Units**" has the meaning set forth in Section 3.6(a).

"**Fair Market Value**" means the value of any specified interest or property as determined by the Board in good faith which good faith standard shall automatically be deemed satisfied if the Board, at the Board's sole option, obtains a letter from a Qualified Financial Advisor stating that the Board's valuation is fair, from a financial point of view, to the Company (and on other terms at least as favorable to the Company or its Subsidiaries, in all material respects, that would have been obtained from an unaffiliated Third Party in a comparable arm's length transaction).

"**Fiscal Year**" means the fiscal year of the Company, and its taxable year for federal income tax purposes, each of which shall be the calendar year unless otherwise established by the Board; *provided*, that for purposes of making allocations under Article V hereof, Fiscal Year shall also include or mean any other period in which it becomes necessary to allocate items of income, gain, loss or deduction for tax purposes.

"**Formation Date**" means January 6, 2017.

"**FS Member**" means FSEP Investments, Inc., a Delaware corporation.

"**Fully Exercising Preemptive Rights Holder**" has the meaning set forth in Section 3.10(c).

"**GAAP**" means those generally accepted accounting principles and practices that are recognized as such by the Financial Accounting Standards Board (or any generally recognized successor) and that, in the case of the Company, are applied for all periods after the Effective Date in a consistent manner. If any change in any accounting principle or practice is required by the Financial Accounting Standards Board (or any such successor) in order for such principle or practice to continue as a generally accepted accounting principle or practice, all reports and financial statements required hereunder with respect to the Company or with respect to the Company may be prepared in accordance with such change.

"**Governmental Authority**" means any legislature, court, tribunal, arbitrator, authority, agency, department, commission, division, board, bureau, branch, official or other instrumentality of the U.S., or any domestic state, county, city, tribal or other political subdivision, governmental department or similar governing entity, and including any governmental, quasi-governmental, regulatory, administrative or non-governmental body exercising similar powers of authority.

"**Indemnitee**" means, (a) with respect to each current or former Member: (i) such Member in its capacity as a Member, (ii) each of such Member's direct and indirect officers, directors, liquidators, partners, equity holders, managers and members in their capacity as such, (iii) each of such Member's Affiliates (other than the Company and its Subsidiaries) and each of

their respective direct and indirect officers, directors, liquidators, partners, equity holders, managers and members in their capacities as such, and (iv) any representatives, agents or employees of any Person identified in clauses (i)-(iii) of this clause (a), (b) each current or former Manager (or member of a committee of the Board), in such Person's capacity as a Manager (or as a member of a committee of the Board), (c) each current or former Officer, in its capacity as an Officer (each, an "**Officer Indemnitee**"), (d) each current or former Partnership Representative and each current or former Designated Individual and (e) any other Person that the Board expressly designates with Majority Consent as an Indemnitee in a written resolution.

"**Independent Manager**" has the meaning set forth in Section 6.2(a)(iv).

"**Initial Members**" means the EIG Member, the FS Member and IntermediateCo, or any of their respective permitted successors or assigns or Transferees.

"**IPO**" means an initial public offering of the Company (or its successor), including a Subsidiary of the Company, a Person that is the holding company of the Company (or its successor) or any Member that Controls the Company.

"**IntermediateCo**" subject to Section 3.4(h), has the meaning set forth in the Recitals.

"**Joinder**" has the meaning set forth in Section 3.4(d).

"**Laws**" means all federal, state and local statutes, laws (including common law), rules, regulations, codes, orders, ordinances, licenses, writs, injunctions, judgments, subpoenas, awards and decrees and other legally enforceable requirements enacted, adopted, issued or promulgated by any Governmental Authority.

"**Liabilities**" means, as to any Person, all liabilities and obligations of such Person, whether matured or unmatured, liquidated or unliquidated, primary or secondary, direct or indirect, absolute, fixed or contingent, and whether or not required to be considered pursuant to GAAP.

"**Liquidator**" has the meaning set forth in Section 10.2.

"**Majority Consent**" means (a) the affirmative vote at any duly called and convened meeting of the Board of more than 50% of all Managers attending such meeting (including by the Managers holding a majority of the number of votes held by all of the Managers then entitled to vote) or (b) the affirmative written Consent in lieu of a meeting of the Board executed by more than 50% of all Managers then constituting the Board (including by the Managers holding a majority of the number of votes held by all of the Managers then entitled to vote). Unless otherwise specified herein, any action or determination by the Board shall be taken or done by Majority Consent, in each case subject to Section 6.3(b).

"**Manager**" has the meaning set forth in Section 6.1.

"**Management Incentive Plan**" means a management incentive plan that provides for the issuance of equity, options and/or other equity-based awards to employees and directors of the Company in the form of restricted units, options, Common Units or other rights, exercisable,

exchangeable, or convertible into Common Units representing up to 10% of the then issued and outstanding Common Units on a fully diluted, as-converted, and fully distributed basis, with such other terms and conditions as determined by the Board.

"**Member**" means the EIG Member, FS Member (including when such Members are referred to herein collectively as EIG), IntermediateCo or any Person hereafter admitted to the Company as a new Member as provided in this Agreement, but does not include any Assignee (unless otherwise admitted as a Member to the Company) or any Person who has ceased to be a Member in the Company (including the Existing Managing Member effective as of its withdrawal pursuant hereto).

"**Member Affiliate**" has the meaning set forth in Section 13.14.

"**Member Indemnitor**" has the meaning set forth in Section 3.6(c).

"**Member Nonrecourse Debt**" has the meaning set forth for "member nonrecourse debt" in Treasury Regulation section 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" has the meaning set forth for the term "member nonrecourse debt minimum gain" in Treasury Regulation section 1.704-2(i)(2).

"**Member Nonrecourse Deductions**" means any and all items of loss, deduction, expenditure (including any expenditure described in section 705(a)(2)(B) of the Code), that, in accordance with the principles of Treasury Regulation section 1.704-2(i), are attributable to Member Nonrecourse Debt.

"**Membership Interest**" means the limited liability company interest in the Company.

"**Net Loss**" has the meaning set forth in Section 4.2(b).

"**Net Profit**" has the meaning set forth in Section 4.2(b).

"**New Debt Securities**" has the meaning set forth in Section 3.10(a).

"**New Equity Securities**" has the meaning set forth in Section 3.10(a).

"**Non-Eligible Holder**" means a Person whom the Board has reasonably determined in good faith does not constitute an Eligible Holder.

"**Non-Fully Exercising Preemptive Rights Holder**" has the meaning set forth in Section 3.10(c).

"**Nonrecourse Built-in Gain**" means with respect to any Company properties that are subject to one or more Nonrecourse Liabilities, the amount of any taxable gain that would be allocated to the Members if such properties were disposed of in a taxable transaction in full satisfaction of such Nonrecourse Liabilities and for no other consideration.

"**Nonrecourse Deductions**" means any and all items of loss, deduction, expenditure (described in section 705(a)(2)(b) of the Code) that, in accordance with the principles of Treasury Regulation section 1.704-2(b)(1), are attributable to a Nonrecourse Liability.

"**Nonrecourse Liability**" has the meaning assigned to such term in Treasury Regulation section 1.704-2(b)(3).

"**Officers**" has the meaning set forth in Section 6.8(a).

"**Other Indemnification Agreement**" means one or more certificate or articles of incorporation, by-laws, limited partnership agreement, limited liability company operating agreement, limited partnership agreement and any other organizational document, and insurance policies maintained by any Member or Manager or Affiliate thereof providing for, among other things, indemnification of and advancement of expenses for any Indemnitee for, among other things, the same matters that are subject to indemnification and advancement of expenses under this Agreement.

"**Parties**" means the Members and the Company.

"**Partnership Representative**" has the meaning set forth in Section 8.2(a).

"**Partnership Tax Audit Rules**" means sections 6221 through 6241 of the Code, including any amendments thereto, together with any Treasury Regulations or administrative guidance issued thereunder or successor provisions, and any similar provisions of applicable state or local Laws.

"**Person**" means any individual or entity, including any corporation, limited liability company, partnership (whether general, limited or otherwise), joint venture, association, joint stock company, trust, unincorporated organization or Governmental Authority.

"**Plan**" has the meaning set forth in the Recitals.

"**Preemptive Rights Holder**" has the meaning set forth in Section 3.10(a).

"**Preemptive Rights Interests**" has the meaning set forth in Section 3.10(a).

"**Preemptive Rights Notice**" has the meaning set forth in Section 3.10(a).

"**Proceeding**" has the meaning set forth in Section 7.1.

"**Profits Interests**" means an interest in the Company that is classified as a partnership profits interest within the meaning of Internal Revenue Service Revenue Procedures 93-27 and 2001-43 (or the corresponding requirements of any subsequent guidance promulgated by the Internal Revenue Service or other applicable Law).

"**Proposed Sale**" has the meaning set forth in Section 3.5(a).

"**Proposed Transfer**" has the meaning set forth in Section 3.7(a).

"**Proposed Transferee**" has the meaning set forth in Section 3.5(a)(i).

"**Qualified Financial Advisor**" means (i) the accounting, appraisal and investment banking firms of national standing as set forth on Schedule 6.3(b)(vii) or (ii) such other accounting, appraisal or investment banking firm of national standing that is engaged by the Company with the prior written consent of each of EIG and IntermediateCo (in each case, which consent shall not be unreasonably withheld, conditioned or delayed).

"**Redeemable Interests**" means any Membership Interests for which a redemption notice has been given, and has not been withdrawn, pursuant to Section 3.9.

"**Required Allocations**" means any allocation of an item of income, gain, loss or deduction pursuant to Section 5.1(b)(i), Section 5.1(b)(ii), Section 5.1(b)(iii), Section 5.1(b)(iv), Section 5.1(b)(v), Section 5.1(b)(vi), Section 5.1(b)(vii) and Section 5.1(b)(viii).

"**ROFR Holder**" has the meaning set forth in Section 3.7(b).

"**Required Transfer**" has the meaning set forth in Section 3.6(a).

"**Required Transfer Notice**" has the meaning set forth in Section 3.6(a).

"**ROFR Election Notice**" has the meaning set forth in Section 3.7(b).

"**ROFR Offer Price**" has the meaning set forth in Section 3.7(a).

"**ROFR Offeror**" has the meaning set forth in Section 3.7(a).

"**ROFR Response Outside Date**" has the meaning set forth in Section 3.7(b).

"**ROFR Transfer Notice**" has the meaning set forth in Section 3.7(a).

"**ROFR Transfer Units**" has the meaning set forth in Section 3.7(a).

"**RRI**" has the meaning set forth in the Recitals.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Interest**" means any security interest, lien, mortgage, deed of trust, encumbrance, hypothecation, pledge, purchase option or other similar adverse claim or obligation, whether created by operation of Law or otherwise, created by any Person in any of its property or rights.

"**Simulated Basis**" means the Carrying Value of any Depletable Property.

"**Simulated Depletion**" means, with respect to each Depletable Property, a depletion allowance computed in accordance with U.S. federal income tax principles using the cost depletion method in the manner specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2). For purposes of computing Simulated Depletion with respect to any

Depletable Property, the Simulated Basis of such property shall be deemed to be the Carrying Value of such property, and in no event shall such allowance, in the aggregate, exceed such Simulated Basis.

"**Simulated Gain**" means the amount of gain realized from the sale or other disposition of Depletable Property as calculated in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2).

"**Simulated Loss**" means the amount of loss realized from the sale or other disposition of Depletable Property as calculated in Treasury Regulations Section 1.704-1(b)(2)(iv)(*k*)(2).

"**Subsidiary**" means, with respect to any relevant Person as of the date the determination is being made, any other Person that (a) is Controlled (directly or indirectly) by such Person and (b) the equity entitled to vote to elect the board of directors, board of managers or other governing authority of which is more than 50% owned (directly or indirectly) by the relevant Person.

"**Tag-Along Notice**" has the meaning set forth in Section 3.5(a).

"**Tag-Along Offer**" has the meaning set forth in Section 3.5(b).

"**Tag-Along Price**" has the meaning set forth in Section 3.5(a)(i).

"**Tag-Along Sale Percentage**" has the meaning set forth in Section 3.5(a)(i).

"**Tag-Along Selling Member**" has the meaning set forth in Section 3.5(a).

"**Tag Units**" has the meaning set forth in Section 3.5(a).

"**Tax Advances**" has the meaning set forth in Section 5.5.

"**Tax Liability**" has the meaning set forth in Section 5.4(b)(i).

"**Tema**" has the meaning set forth in the Recitals.

"**Tema Board Threshold**" means a number of Tema Common Units that represent, in the aggregate, a Common Percentage Interest in excess of 5.0%, measured as of the relevant time of determination.

"**Tema Common Units**" means the aggregate number of (a) Common Units issued to IntermediateCo on the date hereof and pursuant to the Plan in exchange for the contribution by Tema to IntermediateCo of Tema's Contribution, (b) any additional Common Units issued to IntermediateCo in respect thereof following the date of this Agreement, and (c) any such Common Units Transferred to Tema, any successor, assigns or Affiliates thereof, or any Third Party, in each case in accordance with the terms of this Agreement.

"**Tema Manager**" has the meaning set forth in Section 6.2(a)(iii).

"**Tema Qualified Transferee**" means a Transferee of Tema Common Units that, as of the relevant time of determination, owns a number of Tema Common Units that satisfies the Tema Board Threshold.

"**Third Party**" means any Person (other than a Member and its respective Affiliates, and the Company and its Subsidiaries).

"**Third Party Offer**" has the meaning set forth in Section 3.7(a).

"**Transfer**" or "**Transferred**" means, with respect to a Membership Interest, (a) a voluntary or involuntary sale, assignment, transfer, conveyance, exchange, bequest, devise, gift or any other alienation, whether direct or indirect (in each case, with or without consideration and whether by operation of Law or otherwise, including by merger or consolidation) of any rights, interests or obligations with respect to all or any portion of such Membership Interest, or (b) a grant or sufferance of a Security Interest on all or any portion of such Membership Interest, in each case including a Transfer of any equity interests of such Member, other than a Transfer of equity interests that would be a permitted Transfer if such Transfer was of Membership Interests instead of equity interests in a Member.

"**Transferee**" means a Person who receives all or part of a Member's Membership Interest through a Transfer.

"**Treasury Regulation**" means the Income Tax Regulations promulgated under the Code, as may be amended from time to time (including corresponding provisions of successor regulations).

"**Unanimous Consent**" means (a) the affirmative vote of all the Managers constituting the entire Board at a duly called and convened meeting of the Board or (b) the affirmative written consent in lieu of a meeting of the Board executed by all of the Managers (*provided*, that a Manager may grant such affirmative written consent via electronic mail sent to the entire Board), in each case subject to Section 6.3(b).

"**Unpaid Indemnity Amounts**" means any amount that the Company fails to indemnify or advance to an Indemnitee as required by Article VII of this Agreement.

"**Unrealized Gain**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Fair Market Value of such property as of such date (as determined under Section 4.2(d)) over (b) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.2(d) as of such date).

"**Unrealized Loss**" attributable to any item of Company property means, as of any date of determination, the excess, if any, of (a) the Carrying Value of such property as of such date (prior to any adjustment to be made pursuant to Section 4.2(d) as of such date) over (b) the Fair Market Value of such property as of such date (as determined under Section 4.2(d)).

1.2 Other Terms. Other capitalized terms may be defined elsewhere in the text of this Agreement and shall have the meaning so given.

1.3 Construction. Unless the context otherwise requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, the singular shall include the plural, and the plural shall include the singular. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to exhibits attached hereto, each of which is incorporated herein for all purposes. Article and section titles or headings are for convenience only and neither limit nor amplify the provisions of the Agreement itself, and all references herein to articles, sections or subdivisions thereof shall refer to the corresponding article, section or subdivision thereof of this Agreement unless specific reference is made to such articles, sections or subdivisions of another document or instrument. Unless the context of this Agreement clearly requires otherwise, the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation," and the words "hereof," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or Article in which such words appear.

ARTICLE II
ORGANIZATION

2.1 Formation. The Company was organized as a Delaware limited liability company by the filing of a Certificate with the Secretary of State of the State of Delaware pursuant to the Act on the Formation Date. This Agreement is adopted and agreed to by the Members to set forth their agreement with respect to the Company's business and the rights, duties and obligations of the Members.

2.2 Name. The name of the Company is "Rosehill Operating Company, LLC", and all Company business shall be conducted in that name or such other names that comply with applicable Law as the Board may select from time to time.

2.3 Principal Office; Registered Office and Registered Agent; Other Offices. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the registered office named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by applicable Law. The registered agent for service of process of the Company in the State of Delaware shall be the registered agent named in the Certificate or such other Person as the Board may designate from time to time in the manner provided by applicable Law. The principal office of the Company shall be at such place as the Board may designate from time to time (which may be within or outside of the State of Delaware), and the Board may designate additional offices, places of business and/or agents from time to time as deemed advisable.

2.4 Purpose. The purpose of the Company shall be to (a) hold and manage all of the assets acquired by the Company pursuant to the Plan and this Agreement, (b) engage in any business or activity in which a limited liability company may engage under the laws of the State of Delaware and (c) take such other actions and engage in such other activities as may be reasonably necessary or desirable pursuant to accomplish the specific business activities described in clauses (a) and (b).

2.5 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Delaware, the Board shall cause the Company to comply, to the extent

procedures are available and those matters are reasonably within the control of the Company, with all requirements necessary to qualify the Company as a foreign limited liability company and, if necessary, to make such filings and take such actions as may be required to keep the Company in good standing in that jurisdiction. At the request of the Board, each Member agrees to execute, acknowledge and deliver such certificates and other instruments, if any, that are necessary or appropriate to qualify, continue or terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 **Term**. The term of the Company commenced upon the filing of the Certificate in accordance with the Act and the Company shall continue until the termination and dissolution thereof in accordance with the provisions of Article X and the Act.

2.7 **Existing Managing Member Withdrawal and Release**. The Existing Managing Member hereby consents to the amendment and restatement (and termination) of the Existing Agreement pursuant to this Agreement and to the withdrawal, effective as of the Effective Date, of the Existing Managing Member as Member and managing member of the Company, as evidenced by their execution of this Agreement solely for the purpose of providing such consent. The Existing Managing Member hereby releases and forever discharges the Company and the Members and their respective Affiliates and its and their direct and indirect officers, directors, liquidators, partners, equity holders, managers and members, and the Company and the Members hereby release and forever discharge the Existing Managing Member and its Affiliates and its and their direct and indirect officers, directors, liquidators, partners, equity holders, managers and members, from all manner of actions, causes of action, suits, debts, damages, expenses, claims and demands whatsoever arising out of or in any way connected to this Agreement.

ARTICLE III
MEMBERSHIP INTERESTS AND TRANSFERS

3.1 **Classes and Series of Membership Interests; Members**.

(a) *Classes and Series*. Each Member's relative rights, privileges, preferences, restrictions and obligations with respect to the Company are represented by such Member's Membership Interests. As of the Effective Date, there shall be one class of Membership Interests of the Company, with such class referred to herein as the "**Common Units**." Membership Interests may be issued in whole or fractional interests. Any issuances of Membership Interests following the Effective Date may be issued by the Company in a separate class or series at a price per Membership Interest as determined by the Board. A Member may own one or more classes or series of Membership Interests, and the ownership of one class or series of Membership Interests shall not affect the rights, privileges, preferences or obligations of a Member with respect to the other class or series of Membership Interests owned by such Member. Any reference herein to a holder of a class of Membership Interests shall be deemed to refer to such holder only to the extent of such holder's ownership of such class or series of Membership Interests.

(b) *Effective Date Issuances*.

(i) On the Effective Date, the Company issued [●] Common Units to the Members, as set forth on Exhibit A, and such Persons were admitted to the Company as Members.

(ii) Additional Persons may be admitted to the Company as new Members only as provided in this Agreement.

(c) *Amendments to Exhibit A*. The Common Units and the respective Common Percentage Interests held by each Member are set forth on Exhibit A attached hereto. Exhibit A shall be amended by an Officer or the Board from time to time to reflect changes and adjustments resulting from (i) the admission of any new Member, (ii) any Transfer in accordance with this Agreement, and/or (iii) any Capital Contributions made, changes to Common Percentage Interests or additional Membership Interests issued, in each case as permitted by this Agreement (*provided*, that a failure to reflect such change or adjustment on Exhibit A shall not prevent any otherwise valid change or adjustment from being effective). Any reference in this Agreement to Exhibit A shall be deemed a reference to the Exhibit A as amended in accordance with this Section 3.1(c) and in effect from time to time.

3.2 Number of Members. The number of Members of the Company shall never be fewer than one.

3.3 Representations and Warranties.

(a) *Representations and Warranties of the Members*. Unless otherwise set forth in an agreement between the Company and a Member, each Member severally (and not jointly) represents and warrants to the Company and each other Member as of the date of such Member's admittance to the Company that (i) to the extent it is not a natural person, it is validly existing and in good standing under the Laws of the jurisdiction of its formation, and if required by Law is duly qualified to conduct business and is in good standing in the jurisdiction of its principal place of business (if not formed in such jurisdiction); (ii) to the extent it is not a natural person, it has full corporate, limited liability company, partnership, trust or other applicable power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions by the board of directors, equity holders, managers, members, partners, trustees, beneficiaries or other Persons necessary for the due authorization, execution, delivery and performance of this Agreement by that Member have been duly taken; (iii) it has duly executed and delivered this Agreement, and this Agreement is enforceable against such Member in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity); (iv) its authorization, execution, delivery, and performance of this Agreement does not breach or conflict with or constitute a default under (A) such Member's charter or other governing documents to the extent it is not a natural person or (B) any material obligation under any other material agreement or arrangement to which that Member is a party or by which it is bound; and (v) it: (A) has been furnished with such information about the Company and the Membership Interest as that Member has requested, (B) has made its own independent inquiry and investigation into, and based thereon has formed an independent judgment concerning, the Company and such Member's Membership Interest herein, (C) has adequate means of providing for its current needs and possible contingencies, is

able to bear the economic risks of this investment and has a sufficient net worth to sustain a loss of its entire investment in the Company in the event such loss should occur, (D) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, (E) is, or is controlled by, an "accredited investor," as that term is defined in Rule 501(a) of Regulation D, promulgated under the Securities Act, and (F) understands and agrees that its Membership Interest shall not be sold, pledged, hypothecated or otherwise Transferred except in accordance with the terms of this Agreement and pursuant to an effective registration statement under the Securities Act or an applicable exemption from registration and/or qualification under the Securities Act and applicable state securities Laws; *provided*, that, unless prohibited by applicable securities Laws, the foregoing shall not restrict any Initial Member or any of their Affiliates from encumbering or otherwise pledging Common Units in connection with obtaining any financing with respect to an Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

(b) *Representations and Warranties of the Company*. The Company represents and warrants to each Member that as of the Effective Date: (i) it is validly existing and in good standing under the Laws of the State of Delaware; (ii) it has full limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all necessary actions of its members or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by the Company have been duly taken; (iii) it has duly executed and delivered this Agreement, and this Agreement is enforceable against it in accordance with its terms, subject to bankruptcy, moratorium, insolvency and other Laws generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity); (iv) its authorization, execution, delivery, and performance of this Agreement does not breach or conflict with or constitute a default under (A) the Certificate or other governing documents or (B) any material obligation under any other material agreement or contract to which the Company or any Subsidiary is a party or by which it or its assets is bound; (v) the Membership Interests issued upon the execution and delivery of this Agreement by the Parties hereto as set forth in Exhibit A have been duly authorized, validly issued and represent fully paid, non-assessable interests of the applicable class or series of Membership Interests set forth on Exhibit A hereto, and the issuance thereof will be made free and clear of all liens, other than restrictions imposed by this Agreement and applicable securities Laws; and (vi) the Company (including its direct and indirect Subsidiaries) is not in default or breach under any material contract, lease, agreement, mortgage, indenture, credit agreement, or other security or instrument to which it is a party or by which it or its assets are bound.

3.4 Restrictions on the Transfer of Interests.

(a) *Permitted Transfers.* Subject to this Section 3.4, Section 3.5, Section 3.6 and any other restrictions set forth in this Agreement, each Member may freely Transfer all or any portion of such Member's Membership Interests (including to any Affiliate, officer, director, equity holder, member, or partners of an Initial Member). Without limiting the foregoing, and for the avoidance of doubt, (i) IntermediateCo may freely Transfer all or any portion of its Membership Interests to Tema, any Affiliate of Tema and any of the entities listed on Exhibit C, and (ii) any of the foregoing Transferees may freely Transfer all or any portion of any Membership Interests they may hold to any of Tema, any Affiliate of Tema and any of the

entities listed on Exhibit C and, in each case, such Transfers shall not be subject to any Consent and Section 3.4(c) (to the extent applicable), Section 3.5, and Section 3.7 shall not apply to any such Transfers, notwithstanding anything to the contrary. Any purported Transfer in breach of the terms of this Agreement shall be null and void *ab initio*, and the Company shall not recognize any such prohibited Transfer on its books and records. Any Member who Transfers or attempts to Transfer any Membership Interests except in compliance herewith shall be liable to, and shall indemnify and hold harmless, the Company and the other non-Transferring Members for all fees, costs, expenses, damages and other liabilities resulting therefrom. In connection with the Transfer of any Membership Interests, the holder of such Membership Interests shall deliver written notice to the Company describing in reasonable detail the proposed Transfer at least five (5) Business Days prior thereto.

(b) *Securities and Tax Laws.* Notwithstanding anything in this Agreement to the contrary, without the prior approval of the Board, no Membership Interest shall be Transferred (i) except pursuant to an effective registration statement under the applicable securities Laws or an applicable exemption from registration and/or qualification under the Securities Act and any other applicable securities Laws or (ii) if such Transfer would create a reasonable likelihood that the Company could be treated as a "publicly traded partnership" as defined in section 7704(b) of the Code.

(c) *Competitors*. Notwithstanding anything in this Agreement to the contrary, no Membership Interest shall be Transferred to a Competitor; *provided*, that the foregoing shall not restrict Transfers by any Member to (a) another Member or Subsidiary of another Member, (b) any Person organized, formed, incorporated or managed by a private equity fund or other similar investment fund (excluding portfolio companies) or (c) another Member or any Person in connection with a Required Transfer.

(d) *Documentation; Validity of Permitted Transfer.* Any Transfer of a Membership Interest that complies with Section 3.4(a) and Section 3.4(b), shall be effective to assign the right to become a Member, and, without the need for any action or Consent of any other Person, a Transferee of such Membership Interest shall automatically be admitted as a Member once the Company has received a customary joinder agreement in a form acceptable to the Board which has been executed by such Transferee (a "**Joinder**"), pursuant to which such Transferee shall (i) become a party to this Agreement as a Member and shall have the rights and obligations of a Member hereunder, (ii) expressly assume all liabilities and obligations of the Transferring Member (or its applicable Affiliates) to the Company or the other Members and (iii) if the Transferee is to be admitted to the Company as a new Member, acknowledge the representations and warranties in Section 3.3 are true and correct with respect to such Transferee as of the date of the Joinder. Each Transfer is effective against the Company as of the Business Day of delivery of the Joinder to the Company.

(e) *Expenses*. Any costs incurred by the Company in connection with any Transfer by a Member of all or a part of its Membership Interests shall be borne by such Transferring Member. Any transfer or similar taxes arising as a result of the Transfer of a Member's Membership Interest shall be paid by the Transferring Member.

(f) *Distributions*. Any distribution or payment made by the Company to a Transferring Member prior to such time as the Transferee was admitted as a Member pursuant to the provisions of this Agreement with respect to the Transferred Membership Interests shall constitute a release of the Company, the Managers authorizing such distribution and the Members of all liability to such Assignee or new Member who may be interested in such distribution or payment by reason of such Transfer.

(g) *Pledging of Common Units by Initial Members.* Notwithstanding anything to the contrary contained in any provision of this Agreement, unless prohibited by applicable securities Laws, any Initial Member and any of their Affiliates shall be permitted to encumber or otherwise pledge Common Units in connection with obtaining any financing with respect to an Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

(h) *IntermediateCo Transfers*. Notwithstanding anything to the contrary in this Agreement, in the event of a liquidation, dissolution or similar transaction of IntermediateCo that results in the Transfer by IntermediateCo to Tema of Common Units (or IntermediateCo otherwise Transfers Common Units to Tema), Tema shall be entitled to exercise the rights granted to IntermediateCo pursuant to this Agreement to the extent the number of Common Units so Transferred to Tema and/or its Affiliates (and still owned by Tema or its Affiliates as of the relevant time of determination) would be sufficient to allow IntermediateCo to exercise such rights had such Common Units not been Transferred to Tema and/or its Affiliates and were instead retained by IntermediateCo. Tema is a third-party beneficiary to this Section 3.4(h) and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

3.5 Tag-Along Rights.

(a) If at any time prior to the consummation of an IPO, a Member proposes to Transfer more than 15%, collectively in one or a series of transactions (directly or indirectly through holding company or companies), of any of the Membership Interests (other than Membership Interests issued pursuant to the Management Incentive Plan) (the "**Tag Units**") held by such Member and its Affiliates (directly or indirectly through a holding company or companies) (the "**Tag-Along Selling Member**") to a Third Party purchaser (a "**Proposed Sale**"), other than in a Required Transfer (in which case Section 3.6 shall exclusively govern), then such Tag-Along Selling Member shall furnish to each of the other Members holding the same class of Membership Interests a written notice of such Proposed Sale (the "**Tag-Along Notice**") and provide them the opportunity to participate in such Proposed Sale with respect to such same class of Membership Interests on the terms described in this Section 3.5. The Tag-Along Notice will include:

(i) the material terms and conditions of the Proposed Sale, including (A) the number, class and series of Tag Units proposed to be Transferred by the Tag-Along Selling Member in the Proposed Sale, (B) the name of the proposed Transferee (the "**Proposed Transferee**"), (C) the proposed amount and form of consideration to be received in such Proposed Sale in respect of each class or series of Tag Units included in the Proposed Sale (with respect to each such class

or series of Tag Units, the "**Tag-Along Price**"), (D) the proposed Transfer date, if known, which date shall not be less than 20 Business Days after delivery of such Tag-Along Notice and (E) the fraction, expressed as a percentage, determined by *dividing* (1) the number of Tag Units to be Transferred by the Tag-Along Selling Member, by (2) the total number of such class of Tag Units held by the Tag-Along Selling Member (such percentage, the "**Tag-Along Sale Percentage**"); and

(ii) an invitation to each Member to include in the Proposed Sale, Tag Units up to a number equal to (A) the Tag-Along Sale Percentage *multiplied by* (B) the total number of such Tag Units held by such Member.

(b) In order to effectively exercise the tag-along rights provided in this Section 3.5, a Member must, within 15 Business Days following receipt of the Tag-Along Notice, deliver a notice (the "**Tag-Along Offer**") to the Member (i) indicating such Member's desire to irrevocably and unconditionally exercise its tag-along rights hereunder and (ii) specifying the number of Tag Units such Member elects to include in the Proposed Sale pursuant to Section 3.5(a)(ii). If a Member does not deliver a Tag-Along Offer within 15 Business Days following delivery of the Tag-Along Notice, such Member shall be deemed to have waived its rights under this Section 3.5 with respect to such Proposed Sale, and the Tag-Along Selling Member shall thereafter be free to Transfer its Tag Units to the Proposed Transferee without the participation of such Member, at the Tag-Along Price and on other material terms no more favorable in the aggregate than the Tag-Along Price and material terms specified in the Tag-Along Notice; *provided*, that to the extent a Member does not fully exercise their rights under this Section 3.5(b), the Members that elect to participate in the Proposed Sale pursuant to this Section 3.5 shall have the right and option (but not the obligation) to purchase their pro rata portion (based on the issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan)) of any unsubscribed portion of the remaining Tag Units. If a Member elects to participate in the Proposed Sale pursuant to this Section 3.5, such Member shall agree to make to the Proposed Transferee representations and warranties, covenants and indemnities, in each case, that are no more burdensome than those agreed to by the Tag-Along Selling Member in connection with the Proposed Sale; *provided*, that such Member shall receive the same form and amount of consideration per interest as the consideration received by the Tag-Along Selling Member in respect of each applicable class or series of Tag Units (with no premium or additional compensation being paid for the Tag-Along Selling Member's Membership Interests), or if the Tag-Along Selling Member is given an option as to the form and amount of consideration to be received, the participating Members will be given the same option other than to the extent of any limitation under applicable Law, including the Securities Act, which would prevent a Member from receiving a certain form of consideration; *provided*, (x) the Tag-Along Selling Member shall not be liable for any breach of any covenant or representation and warranties by another Member (and vice versa), (y) in no event shall any Member be required to make representations and warranties or provide indemnities as to any other Member (including any indemnity obligations that relate specifically to a particular Member, such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of Membership Interests) and (z) any liability relating to representations and warranties (and related indemnities) or other indemnification obligations regarding the business of the Company in connection with the Proposed Sale shall be shared by the participating Members pro rata on a several (but not joint)

basis in proportion to the consideration to be received in the Proposed Sale by each participating Member. For the avoidance of doubt, the Tag-Along Price per Tag Unit may differ to the extent necessary in order to reflect differences, if any, in the amounts otherwise distributable to the Tag Units in accordance with this Agreement.

(c) The offer of any Member contained in such Member's Tag-Along Offer shall be irrevocable, and, to the extent such offer is accepted, such Member shall be bound and obligated to Transfer in the Proposed Sale on the same terms and conditions as the Tag-Along Selling Member, up to such number of Tag Units such Member shall have specified in its Tag-Along Offer; *provided*, *however*, that if the material terms of the Proposed Sale change, with the result that the price per Tag-Along Selling Member's Tag Units to be transferred shall be less than the price per Common Unit set forth in the Tag-Along Notice (with the result being that the price per Tag Unit is also less than that proposed in the Tag-Along Offer), the form or amount per interest of consideration shall be different or the other terms and conditions shall be materially less favorable in the aggregate to the other Members than those set forth in the Tag-Along Notice, such Member shall be permitted to withdraw the offer contained in the applicable Tag-Along Offer by written notice to the Tag-Along Selling Member and upon such withdrawal shall be released from such holder's obligations.

(d) If a Member exercises its rights under this Section 3.5, the closing of the sale of each Member's Tag Units in the Proposed Sale will take place concurrently. If the closing with the Proposed Transferee (whether or not a Member has exercised its rights under this Section 3.5) shall not have occurred by 5:00 p.m. Central Time on the date that is 120 days after the date of the Tag-Along Notice, as such period may be extended to obtain any required regulatory approvals, and on material terms no more favorable in the aggregate than the per Tag-Along Selling Member's Tag Unit price and material terms specified in the Tag-Along Notice, all the restrictions on Transfer contained in this Agreement shall again be in effect with respect to such Tag-Along Selling Member's Tag Units and proposed Transfer.

(e) The Company shall bear the costs of the Members arising pursuant to a Proposed Sale, including costs incurred in connection with the negotiation of any Proposed Sale; *provided*, that any costs incurred by a Member (and not by the Company on behalf of the Members) shall be customary and reasonable in nature.

3.6 Required Transfers; Exit Transactions.

(a) Subject to Section 6.3(b), if a Change of Control or IPO is duly authorized or approved by the Board, the Members hereby acknowledge and agree that the Company is authorized to sell, exchange or Transfer all, but not less than all, Membership Interests (the "**Exit Units**") in order to either (i) effectuate such Change of Control or IPO or (ii) reorganize the organization or capital structure of the Company in order to effectuate such Change of Control or IPO (each, a "**Required Transfer**"), by delivering a written notice (a "**Required Transfer Notice**") with respect to such Required Transfer at least 30 Business Days prior to the anticipated closing date of such Required Transfer (or at least 20 days prior to the Company's initial submission or filing with the Commission of a registration statement with respect to an IPO) to all applicable Members ("**Exit Members**") requiring them to submit for sell, exchange or otherwise Transfer their Exit Units in accordance with the provisions of this Section 3.6.

(b) The Required Transfer Notice will include the material terms and conditions of the Required Transfer, including (i) the name and address of the proposed Transferee or acquiror, (ii) the proposed amount and form of consideration (and if such consideration consists in part or in whole of property other than cash, the Company will provide such information, to the extent reasonably available to it, relating to such non-cash consideration as the Exit Members may reasonably request in order to evaluate such non-cash consideration; *provided*, *however*, that the provision of such information (or lack thereof) shall not relieve any Exit Member of its obligation to sell or otherwise Transfer Exit Units under this Section 3.6) and (iii) the proposed date of the Required Transfer, if known. The Company will deliver or cause to be delivered to each Exit Member copies of all transaction documents relating to the Required Transfer promptly as the same become available.

(c) Each Exit Member, upon receipt of a Required Transfer Notice, shall be obligated (i) to submit for sell, exchange or otherwise Transfer its respective Exit Units and participate in the Required Transfer, (ii) to vote, if required by this Agreement or Law, its Exit Units in favor of the Required Transfer at any meeting of the Company called to vote on or approve the Required Transfer or to consent in writing to the Required Transfer, (iii) to cause any Manager designated or nominated by such Exit Member to the Board to vote in favor of the Required Transfer in a vote by the Board called to vote on or approve the Required Transfer or to consent in writing to the Required Transfer, (iv) to waive all dissenters' or appraisal rights, if any and applicable, in connection with the Required Transfer, (v) to enter into agreements effectuating the Required Transfer, (vi) to agree (as to itself) to make to the proposed Transferee the same representations, warranties, covenants, indemnities and agreements as each other Member (including each Exit Member) agrees to make in connection with the Required Transfer, and to take or cause to be taken all other actions as may be reasonably necessary to consummate the Required Transfer; *provided*, (x) no Exit Member shall be liable for any breach of any covenant or representation and warranties by another Member (and vice versa), (y) in no event shall any Member be required to make representations and warranties or provide indemnities as to any other Member (including any indemnity obligations that relate specifically to a particular Member, such as indemnification with respect to representations and warranties given by a Member regarding such Member's title to and ownership of Membership Interests) and (z) any liability relating to representations and warranties (and related indemnities) or other indemnification obligations regarding the business of the Company in connection with the Required Transfer shall be shared by (I) the Initial Members~~, (II) any Affiliate of an Initial Member that is a~~ and their Affiliates, in each case that are Members as of the consummation of such Required Transfer (each to the extent of their respective ownership of Equity Interests) and (II) without duplication of amounts in the foregoing clause (I), each Common Member as of the consummation of such Required Transfer~~ and (III) each Common Member that is not an Affiliate of an Initial Member~~ (other than any such Common Member that is a Common Member ~~solely~~ by virtue of owning Equity Interests of the Company that were issued pursuant to the Approved MIP and solely with respect to such Equity Interests, unless the terms of the Approved MIP expressly provide otherwise) (each, a "**Member Indemnitor**"), on a several (but not joint) basis in proportion to the consideration to be received in the Proposed Sale by each participating Member Indemnitor (*provided*, that no Member Indemnitor's liability shall exceed the consideration received by such Member Indemnitor in connection with a Required Transfer). In furtherance of, but only to the extent that a Member breaches its obligations under this Section 3.6 (which is intentional or willful), each of the Members hereby (A) irrevocably appoints the

Officer duly authorized by the Board as its agent and attorney-in-fact (the "**Agent**") (with full power of substitution) to execute all agreements, instruments and certificates and take all actions necessary or desirable to effectuate any Required Transfer hereunder and (B) grants to the Agent a proxy (which shall be deemed to be coupled with an interest and irrevocable) to vote the Membership Interests held by such Member in favor of any Required Transfer hereunder. The Company shall be obligated to pay any fees, costs and expenses incurred in connection with any unconsummated Required Transfer, and all expenses of a Required Transfer, including bankers' fees, attorneys' fees and accountants' fees.

(d) In connection with an IPO that is duly authorized or approved by the Board, (i) the Board shall cause the Company (or any successor entity) to enter into a standard and customary registration rights agreement, which provides as a condition to the consummation of any such IPO that IntermediateCo (or the Person that is the owner of record of IntermediateCo's Membership Interests at the time of such IPO) be party to such registration rights agreement and be granted standard and customary "piggyback" registration rights in respect of the equity interests received by IntermediateCo, directly or indirectly, in connection with such IPO in exchange for its Membership Interests and (ii) each of the Members will receive the same class of security in the IPO issuer *pro rata*, and on any such conversion or exchange, the Board shall cause the Company to provide each Member substantially similar economic and other rights, privileges and preferences in respect of their equity in the IPO issuer as the equity securities they are exchanging or converting.

(e) Notwithstanding anything to the contrary herein, any Change of Control or IPO or any other transaction may, in the Board's sole discretion, be structured as a sale or transfer of equity securities of a Blocker (or Blockers) affiliated with a Member (including any Blockers that are Members), including (in connection with an IPO) by merging such Blocker(s) or transferring such equity securities in a tax-free transaction, including under Sections 368 or 351 of the Code (any such Change of Control or IPO structure, a "**Blocker Transfer**"); *provided*, that (i) neither the Company nor the Board shall be under any obligation to structure any Change of Control or IPO as a Blocker Transfer and (ii) if a Change of Control is structured as a Blocker Transfer, no Member (other than the Member(s) affiliated with or controlling the Blocker(s) subject to such Blocker Transfer) shall suffer or incur any reduction in purchase consideration or liability or obligation (including any tax liabilities or obligations) resulting from such Blocker Transfer, and any such reduction or liability or obligation (including any tax liability or obligation) shall be borne solely by the Member(s) affiliated with such Blocker(s).

3.7 Right of First Refusal.

(a) If a (i) Common Member, other than EIG, receives a bona fide written offer from a Third Party (the "**Third Party Offer**") for the purchase of all or a part of such Member's Common Units and is otherwise permitted to by this Agreement to consummate such a Transfer, (a proposed Transfer pursuant to this clause (i), a "**Proposed Transfer**" and such units, the "**ROFR Transfer Units**"), and (ii) such offering Common Member (the "**ROFR Offeror**") desires to effect such Proposed Transfer, such ROFR Offeror shall first give the Company notice, in writing, of a right of first refusal (any such notice, a "**ROFR Transfer Notice**") to purchase the ROFR Transfer Units. The ROFR Transfer Notice shall set forth the name of the Third Party (including, if such information is not publicly available, information

about the identity of the Third Party), the number, class, and series of the ROFR Transfer Units, the proposed price per ROFR Transfer Unit, inclusive of any contingent consideration (the "**ROFR Offer Price**"), all details of the payment terms and all other material terms and conditions of the Proposed Transfer. The ROFR Offer Price per ROFR Transfer Unit may differ to the extent necessary in order to reflect differences, if any, in the amounts otherwise distributable to the ROFR Transfer Units in accordance with this Agreement. A Proposed Transfer may not contain provisions related to any property of the ROFR Offeror other than the Common Units held by the ROFR Offeror or contemplate any consideration other than cash (in U.S. dollars) and the ROFR Offeror may not accept a Third Party Offer if such offer contains provisions inconsistent with the foregoing.

(b) Upon receipt of a ROFR Transfer Notice, the Company will have the exclusive right, but not the obligation, to purchase the ROFR Transfer Units, in whole or in part, by delivery a written notice (any such notice, a "**ROFR Election Notice**") to the ROFR Offeror within 10 Business Days of the receipt by the Company of such ROFR Transfer Notice. If the Company declines or otherwise fails to provide a ROFR Election Notice within such 10-Business Day period, then the ROFR Offeror shall next provide EIG with a ROFR Transfer Notice for EIG (or its Affiliates) to purchase all or any portion of the remaining ROFR Transfer Units within five Business Days of the receipt by EIG of such ROFR Transfer Notice. If EIG fails to provide a ROFR Election Notice within such ten-Business Day period, then the ROFR Offeror shall next provide IntermediateCo with a ROFR Transfer Notice to purchase all or any portion of the remaining ROFR Transfer Units within 10 Business Days of the receipt by IntermediateCo of such ROFR Transfer Notice. In the event that neither the Company, EIG nor IntermediateCo exercises a ROFR Election Notice in accordance with the foregoing, then the ROFR Offeror shall provide a ROFR Transfer Notice to each of the Common Members (excluding the holders of Membership Interests issued under the Management Incentive Plan) (together with the Company, EIG and IntermediateCo, for purposes of this Section 3.7, the "**ROFR Holders**") for the option to purchase such Common Member's pro rata share of the remaining ROFR Transfer Units within 10 Business Days of receipt of such ROFR Transfer Notice (the "**ROFR Response Outside Date**"); *provided*, that to the extent ROFR Holders do not fully exercise their rights under this Section 3.7(b), the ROFR Holders that provided a ROFR Election Notice shall have the right and option (but not the obligation) to purchase their pro rata portion (based on the issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan)) of any unsubscribed portion of the remaining ROFR Transfer Units. Any ROFR Election Notice must contain a binding and enforceable commitment by each ROFR Holder that delivered a ROFR Election Notice to pay the entire amount of the ROFR Offer Price attributable to the ROFR Transfer Units to be acquired by such ROFR Holder in accordance with this Section 3.7, including any contingent consideration, in full at the closing of the proposed transaction. The delivery of a ROFR Election Notice pursuant to this Section 3.7 shall constitute an irrevocable commitment to purchase such ROFR Transfer Units.

(c) If, after compliance with the provisions of Section 3.7(b), a ROFR Holder has elected to purchase ROFR Transfer Units, then the Company shall thereafter set a reasonable place and time for the closing of the purchase and sale of such ROFR Transfer Units, which shall occur as promptly as reasonably practicable following the receipt of any required third-party or regulatory approvals (including pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of

1976 or similar laws) on a date and time as agreed in good faith between the applicable ROFR Holder(s) and the ROFR Operator, subject to Section 3.7(e).

(d) The purchase price and other terms and conditions for the purchase of the ROFR Transfer Units pursuant to this Section 3.7 shall be as set forth in the applicable ROFR Election Notice; *provided*, that the ROFR Offeror shall make customary representations and warranties concerning (i) such ROFR Offeror's valid title to an ownership of the ROFR Transfer Units, free and clear of all liens, claims and encumbrances (excluding those arising under this Agreement and any applicable securities Laws), (ii) the ROFR Offeror's authority, power and right to enter into and consummate the sale of the ROFR Transfer Units, (iii) the absence of any violation, default or acceleration of any agreement to which the ROFR Offeror is subject or by which its assets are bound as a result of the agreement to sell and the sale of the ROFR Transfer Units and (iv) the absence of, or compliance with, any governmental or third party consents, approvals, filings or notifications required to be obtained or made by the ROFR Offeror in connection with the sale of the ROFR Transfer Units. The Company, the applicable ROFR Holder(s), the Company, the Board and the ROFR Offeror also agree to execute and deliver such customary instruments and documents and take such actions, including obtaining all applicable approvals and consents and making all applicable notifications and filings, as such ROFR Holder(s), the Company, the Board and the ROFR Offeror may reasonably request in order to effectively implement the purchase and sale of the ROFR Transfer Units hereunder. The Company, the Board and the ROFR Offeror will promptly cooperate with any reasonable requests of the ROFR Holder for information regarding the ROFR Transfer Units.

(e) Notwithstanding the foregoing, (i) if there is no election to purchase all of the ROFR Transfer Units in accordance with Section 3.7(b) on or prior to the termination of the final ROFR Response Outside Date, then the ROFR Offeror may sell that portion of the ROFR Transfer Units that are not the subject of a ROFR Election Notice within 60 days of the ROFR Response Outside Date or (ii) if the ROFR Holder fails to consummate the closing of the purchase and sale of the ROFR Transfer Units on or prior to the ROFR Response Outside Date (and the ROFR Offeror has fully complied with the provisions of this Section 3.7), then such ROFR Holder shall not have the right to purchase any of the ROFR Transfer Units, and the ROFR Offeror may sell that portion of the ROFR Transfer Units that are not the subject of a ROFR Election Notice to the offeror of the Third Party Offer within 60 days after the ROFR Response Outside Date, subject to the terms of this Agreement. Any such sale shall not be at less than the price or upon terms and conditions more favorable, individually or in the aggregate, than those specified in the ROFR Transfer Notice. If the ROFR Transfer Units are not so transferred within such 60-day period, then the ROFR Offeror may not sell any of the ROFR Transfer Units without again complying with the provisions of this Section 3.7.

(f) Any purchaser of ROFR Transfer Units:

(i) shall be required to make the same representations and warranties as the ROFR Offeror in connection with such Member's initial purchase of Common Units;

(ii) must execute and deliver a Joinder to the Company; and

(iii) other than a Tema Qualified Transferee, shall not have the right to appoint a Manager under Section 6.2(a).

3.8 Eligible Holder Certifications; Non-Eligible Holders.

(a) If an Assignee fails to furnish to the Company a properly completed Eligible Holder Certification properly requested pursuant to Section 3.8(b), or if, upon receipt of such Eligible Holder Certification or otherwise, the Board reasonably determines in good faith that such Assignee is not an Eligible Holder, the Membership Interests owned by such Assignee shall be subject to redemption in accordance with the provisions of Section 3.9.

(b) The Board may request, in writing, that any Member or Assignee furnish to the Board, within 30 days after receipt of such written request, an executed Eligible Holder Certification or such other reasonably necessary information concerning such Person's nationality, citizenship or other related status (or, if the Member or Assignee is a nominee holding for the account of another Person (other than any Person who directly or indirectly owns equity interests in a corporation incorporated under the laws of the United States or any State or territory thereof, so long as that corporation (i) is qualified to hold federal leases under 30 U.S.C. 181 and 43 C.F.R. 3102.2 or its successor stature or rule and (ii) is the direct and indirect owner of such Assignee), the nationality, citizenship or other related status of such Person) as the Board in good faith may request in writing. If a Member or Assignee fails to furnish to the Board within the aforementioned 30-day period, such Eligible Holder Certification or other requested information or if upon receipt of such Eligible Holder Certification or other requested information the Board determines in good faith that a Member or Assignee is not an Eligible Holder, the Membership Interests owned by such Member or Assignee shall be subject to redemption in accordance with the provisions of Section 3.9. In addition, the Board may require that the status of any such Member or Assignee be changed to that of a Non-Eligible Holder and, thereupon, the Board shall be substituted for such Non-Eligible Holder as the Member in respect of the Non-Eligible Holder's Membership Interests, and any Manager appointed by such Non-Eligible Holder pursuant to Section 6.2 shall be removed as Manager.

(c) The Board shall, in exercising voting rights in respect of Membership Interests held by it on behalf of Non-Eligible Holders, distribute the votes in the same ratios as the votes of Members in respect of Membership Interests other than those of Non-Eligible Holders are cast, either for, against or abstaining as to the matter.

(d) At any time after a Non-Eligible Holder can and does certify that it has become an Eligible Holder, a Non-Eligible Holder may, upon application to the Board, request admission as a Member with respect to any Membership Interests of such Non-Eligible Holder not redeemed pursuant to Section 3.9, and upon admission of such Non-Eligible Holder as a Member, the Board shall cease to be deemed to be the Member in respect of the Non-Eligible Holder's Membership Interests.

3.9 Redemption of Membership Interests of Non-Eligible Holders.

(a) If at any time a Member or Assignee fails to furnish an Eligible Holder Certification or other information requested within the 30-day period specified in Section 3.8(b),

or if upon receipt of such Eligible Holder Certification or other information, the Board reasonably determines in good faith, with the advice of counsel, that a Member or Assignee is not an Eligible Holder, the Company may, unless the Member or Assignee establishes to the reasonable satisfaction of the Board in good faith that such Member or Assignee is an Eligible Holder or has Transferred such Member's Membership Interests to a Person who is an Eligible Holder and who furnishes an Eligible Holder Certification to the Board prior to the date fixed for redemption as provided below, redeem the Membership Interest of such Member or Assignee as follows:

(i) The Board shall, not later than the 30th day before the date fixed for redemption, give notice of redemption to the Member or Assignee, at such Person's last address designated on the records of the Company. The notice shall be deemed to have been given when so sent. The notice shall specify the Redeemable Interests, the date fixed for redemption, the place of payment, that payment of the redemption price will be made upon surrender of the any certificate evidencing the Redeemable Interests and that on and after the date fixed for redemption no further allocations or distributions to which the Member or Assignee would otherwise be entitled in respect of the Redeemable Interests will accrue or be made.

(ii) The aggregate redemption price for Redeemable Interests shall be an amount equal to the Fair Market Value (the date of determination of which shall be the date fixed for redemption) of Membership Interests of the class to be so redeemed multiplied by the number of Membership Interests of each such class included among the Redeemable Interests. The redemption price shall be paid, as determined by the Board, in cash or by delivery of a promissory note of the Company in the principal amount of the redemption price, bearing interest at the rate of 10% annually and payable in three equal annual installments of principal together with accrued interest, commencing one year after the redemption date.

(iii) Upon surrender by or on behalf of the Member or Assignee, at the place specified in the notice of redemption, of any certificate evidencing the Redeemable Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank, the Member or Assignee or such Member's or Assignee's duly authorized representative shall be entitled to receive the payment therefor.

(iv) After the redemption date, Redeemable Interests shall no longer constitute issued and outstanding Membership Interests.

(b) The provisions of this Section 3.9 shall also be applicable to Membership Interests held by a Member or Assignee as nominee of a Person determined to be other than an Eligible Holder.

(c) Nothing in this Section 3.9 shall prevent the recipient of a notice of redemption from Transferring such Member's Membership Interest before the redemption date if such Transfer is otherwise permitted under this Agreement. Upon receipt of notice of such a Transfer, the Board shall withdraw the notice of redemption, provided the Transferee of such

Membership Interest certifies to the satisfaction of the Board that the Transferee is an Eligible Holder. If the Transferee fails to make such certification, such redemption shall be effected from the Transferee on the original redemption date.

3.10 Preemptive Rights.

(a) If the Company offers to issue any (i) Equity Interests of the Company or any of its Subsidiaries, to any Person ("**New Equity Securities**") or (ii) unsecured or secured debt obligations of the Company or any of its Subsidiaries ("**Debt Securities**") to any Member or Affiliate of a Member (or, if none of EIG or its Affiliates are a Member of the Company as of the relevant time of determination but EIG or its Affiliates own Debt Securities of the Company as of such time, to EIG) ("**New Debt Securities**" and, together with New Equity Securities, the "**Preemptive Rights Interests**"), the Company shall: (i) provide each Common Member (each, a "**Preemptive Rights Holder**") at least 15 days' prior written notice of the proposed issuance, setting forth in reasonable detail the proposed terms and conditions of the proposed issuance and such Preemptive Rights Holder's Common Percentage Interest of such proposed issuance (the "**Preemptive Rights Notice**") and (ii) offer to sell to each Preemptive Rights Holder a portion of such Preemptive Rights Interests equal to such Preemptive Rights Holder's pro rata portion of issued and outstanding Common Units (excluding any Membership Interests issued under the Management Incentive Plan or similar plan). The purchase price for all such Preemptive Rights Interests offered to Preemptive Rights Holders under this Section 3.10 shall be payable in cash; *provided*, that, to the extent any Preemptive Rights Holder that exercises its rights pursuant to this Section 3.10 (each, a "**Buyer**") tenders non-cash consideration, the Preemptive Rights Holders that are participating shall be required to tender the proportionate cash equivalent of such non-cash consideration, as determined by the Board in good faith.

(b) In order to exercise its preemptive rights hereunder, a Preemptive Rights Holder must, within 15 days after receipt of the Preemptive Rights Notice, deliver a written notice to the Company describing such Preemptive Rights Holder's election to purchase its Common Percentage Interest of the Preemptive Rights Interests offered thereby (or such portion thereof as the Preemptive Rights Holder may elect to purchase), in which case the Company (or its Subsidiary, as the case may be) shall sell to such Preemptive Rights Holder the Preemptive Rights Interests such Preemptive Rights Holder elected to purchase at the same price and on the same terms as such Preemptive Rights Interests were offered to any Buyer. To the extent that any Preemptive Rights Holder does not notify the Company that it intends to exercise its right to participate in any issuance of Preemptive Rights Interests subject to this Section 3.10 within 15 days after receipt of the Preemptive Rights Notice, such Preemptive Rights Holder shall be deemed to have waived the rights set forth in this Section 3.10 solely in respect of such issuance.

(c) Notwithstanding the foregoing, if any Preemptive Rights Holder does not exercise its rights pursuant to this Section 3.10 in full (such Preemptive Rights Holder, a "**Non-Fully Exercising Preemptive Rights Holder**" and the portion of such Non-Fully Exercising Preemptive Rights Holder's Common Percentage Interest of the Preemptive Rights Interests for which such right was not exercised, the "**Available Securities**"), each Preemptive Rights Holder that has exercised its rights under this Section 3.10 in full (each such Preemptive Rights Holder, a "**Fully Exercising Preemptive Rights Holder**") shall also have the right to purchase its Common Percentage Interest of the Available Securities on the same terms and

conditions as offered to any Buyer. Promptly, and in any event within 10 Business Days after it has been determined that there are any Available Securities, the Company shall give written notice to the Fully Exercising Preemptive Rights Holders setting forth the number of Available Securities and such Fully Exercising Preemptive Rights Holder's Common Percentage Interest of such Available Securities. Any Fully Exercising Preemptive Rights Holder must exercise its rights with respect to any Available Securities by delivering written notice to the Company within 10 Business Days after receipt of such notice.

(d) Upon the expiration of the offering periods described above, the Company (or its Subsidiary, as the case may be) shall be entitled to sell such Preemptive Rights Interests which such Preemptive Rights Holders have not elected to purchase during the 60 days following such expiration at a price not less than and on other terms and conditions no more favorable to the Buyer(s) thereof than those offered to such Preemptive Rights Holders. Any Preemptive Rights Interests offered or sold by the Company (or its Subsidiary, as the case may be) after such 60-day period must be reoffered in accordance with the terms of this Section 3.10.

(e) The obligations set forth in this Section 3.10 shall not apply to the following issuances of Preemptive Rights Interests by the Company or any of its Subsidiaries: (i) Equity Interests of the Company or any of its Subsidiaries issued in connection with any merger, consolidation, acquisition of assets or businesses or similar transaction that has been approved in accordance with the terms of this Agreement; (ii) Equity Interests issued by a Subsidiary of the Company to the Company or another wholly owned Subsidiary of the Company; (iii) Membership Interests issued in connection with any issuance of indebtedness of the Company or its Subsidiaries to Third Parties; (iv) Equity Interests offered to the public pursuant to a registration statement filed under the Securities Act, including pursuant to an IPO; (vi) Equity Interests issued pursuant to the Management Incentive Plan (collectively, "**Exempted Securities**").

(f) If any regulatory approval, including the filing and the expiration of any waiting period under any Law, is required prior to the issuance of any Preemptive Rights Interests (assuming the exercise of the rights of the Preemptive Rights Holders under this Section 3.10), the Company (or its Subsidiary, as the case may be) shall not issue such Preemptive Rights Interests until such approval has been obtained (or, if applicable, the filing has been completed and such waiting period has expired). The Company and the Members shall use their commercially reasonable efforts to comply promptly with all applicable regulatory requirements in connection with the issuance of Preemptive Rights Interests by the Company and the purchase thereof by any Preemptive Rights Holder exercising such Preemptive Rights Holder's rights pursuant to this Section 3.10; *provided, however,* that no Member or Affiliate of a Member shall be required to divest any assets in order to comply with such regulatory requirements.

(g) Notwithstanding anything to the contrary in this Agreement, the observance of any provision of this Section 3.10 may be waived (either generally or in a particular instance and either retroactively or prospectively) by Unanimous Consent; *provided*, *however*, that none of the provisions of this Section 3.10 applicable to an Initial Member or the rights of an Initial Member as a Preemptive Rights Holder hereunder may be amended, altered, waived, or otherwise modified under any circumstances without the prior written consent of such Initial Member.

3.11 **Management Incentive Plan**. Within 60 days of the date hereof, in accordance with the Plan, the Board shall approve and adopt (a) a Management Incentive Plan containing such terms and conditions as determined by the Board, acting in good faith (the "**Approved MIP**"), and (b) form of award agreements pursuant to which Equity Interests of the Company may be granted or issued to employees, directors, managers and other Persons providing services to the Company and its Subsidiaries, as determined by the Board (the "**Award Agreements**"). Notwithstanding anything contained in this Agreement to the contrary, but subject to the applicable terms of the Plan and Section 6.3(b)(ix), neither (i) the adoption of the Approved MIP by the Company (or any Award Agreements pursuant to which Equity Interests of the Company may be issued pursuant thereto) nor (ii) the issuance of any Equity Interests of the Company pursuant thereto shall require the consent or approval of any Person other than the Board.

3.12 **EIG Monitoring Agreement**. The Board and each of the Members acknowledge, agree and consent to (a) the execution by the Company of the EIG Monitoring Agreement, which EIG Monitoring Agreement shall be binding on and enforceable against the Company in accordance with its terms, and (b) the performance by the Company of its obligations pursuant to the EIG Monitoring Agreement, subject to the terms and conditions of the EIG Monitoring Agreement and Section 6.3(b)(vii).

ARTICLE IV
CAPITAL CONTRIBUTIONS

4.1 **Capital Contributions; Return of Cash**.

(a) *General*. Notwithstanding anything to the contrary herein, no Member shall be required to make any Capital Contributions to the Company, except as otherwise agreed to in writing by such Member.

(b) Capital Calls.

(i) After the Effective Date, the Board may, in its sole discretion, determine that additional Capital Contributions are necessary for the conduct of the Company's business and for legitimate business purposes determined in good faith (any such additional Capital Contributions called from the Common Members by the Board, being hereinafter referred to as an "**Additional Call Amount**"). In that event, the Common Members (including holders of additional Equity Interests issued by the Company which are designated as Common Units) shall have the option (but not the obligation), to participate in such additional Capital Contributions in accordance with their Common Percentage Interest. To the extent less than all of the Common Members elect to make an additional Capital Contribution, those Common Members that do elect to make an additional Capital Contribution shall have the option (but not the obligation) to increase their additional Capital Contributions pro rata in accordance with their respective Common Percentage Interests such that the total of the additional Capital Contribution equals the Additional Call Amount. Unless otherwise determined by the Board, the funding of any such Additional Call Amount shall be made no later than 30 Business Days following a Common Member's receipt of a capital call

notice in respect of such Additional Call Amount; *provided*, that in no event shall such amounts be required to be funded to the Company sooner than 15 Business Days following receipt of such capital call notice.

(ii) Upon the funding of any Capital Contribution by a Common Member pursuant to Section 4.1(b)(i) above, such Common Member shall be issued a number of additional Common Units (or additional Equity Interests issued by the Company), as applicable, equal to the amount of the Capital Contribution made by such Common Member in respect of such Capital Contribution *divided by* a price per Common Unit determined by the Board. Exhibit A and the books and records of the Company shall be thereafter amended accordingly. For the avoidance of doubt, Section 3.10 shall not apply to any issuance of Common Units or Equity Interests pursuant to this Section 4.1(b).

(c) *Initial Membership Capital Contribution*. The Initial Members shall be treated for U.S. federal income tax purposes as making a Capital Contribution of their portion of the underlying assets of the Company at the time they became Members.

4.2 Capital Accounts. The Company shall maintain for each Member a separate Capital Account with respect to each class or series of interests owned by the Member in accordance with the rules of Treasury Regulation section 1.704-1(b)(2)(iv) and in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by (i) the amount of all Capital Contributions made (or deemed made) to the Company by such Member pursuant to this Agreement (net of any liabilities assumed by the Company in connection with such Capital Contributions and any liabilities to which any property comprising such Capital Contributions is subject), and (ii) all Net Profit or items of Company income and gain allocated with respect to such Member pursuant to Section 5.1, and decreased by (x) the amount of cash or Agreed Value of property actually or deemed distributed to such Member pursuant to this Agreement (net of liabilities assumed by such Member and the liabilities to which such property is subject), and (y) all Net Loss or items of Company deduction allocated to such Member pursuant to Section 5.1.

(b) For purposes of computing the amount which is to be allocated pursuant to Article V and is to be reflected in the Members' Capital Accounts, "**Net Profit**" and "**Net Loss**" shall mean the Company's taxable income or loss for federal income tax purposes; *provided*, that:

(i) Any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account in computing Net Profit and Net Loss pursuant to this definition of "Net Profit" and "Net Loss" shall be added to such taxable income or loss.

(ii) All fees and other expenses incurred by the Company to promote the sale of (or to sell) a Membership Interest that can neither be deducted nor amortized under section 709 of the Code, if any, shall, for purposes of Capital

Account maintenance, be treated as an item of deduction at the time such fees and other expenses are incurred.

(iii) Except as otherwise provided in Treasury Regulation section 1.704-1(b)(2)(iv)(m), the computation of Net Profit and Net Loss shall be made without regard to any election under section 754 of the Code which may be made by the Company and, as to those items described in section 705(a)(1)(B) or 705(a)(2)(B) of the Code, without regard to the fact that such items are not includable in gross income or are neither currently deductible nor capitalized for federal income tax purposes. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to section 734(b) or 743(b) of the Code is required, pursuant to Treasury Regulation section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment in the Capital Accounts shall be treated as an item of gain or loss.

(iv) If the Carrying Value of any asset (other than Depletable property) differs from its adjusted tax basis for U.S. federal income tax purposes, any gain or loss resulting from a disposition of such asset, and any depreciation, amortization or cost recovery deduction with respect to such asset, shall be calculated with reference to such Carrying Value.

(v) In the event that an adjustment to the Carrying Value of the assets of the Company occurs pursuant to Section 4.2(d), any Unrealized Gain or Unrealized Loss shall be treated as having been actually realized.

(vi) Gain resulting from any disposition of a Depletable Property with respect to which gain is recognized for U.S. federal income tax purposes shall be treated as being equal to the corresponding Simulated Gain.

(c) A Transferee shall succeed to the pro rata portion of the Capital Account of the transferor relating to the Membership Interest so Transferred. Except as otherwise provided herein, all items of income, gain, expense, loss, deduction, and credit allocable to any Membership Interest that may have been Transferred during any calendar year shall, if permitted by law, be allocated between the transferor and the Transferee based on the portion of the calendar year during which each was recognized as owning that Membership Interest, based upon the interim closing of the books method or such other method as agreed between the transferor and the Transferee; *provided*, *however*, that this allocation must be made in accordance with a method permissible under section 706 of the Code and the Treasury Regulations thereunder.

(d) In accordance with Treasury Regulation section 1.704-1(b)(2)(iv)(f), (i) on an issuance of additional Membership Interests for cash or Contributed Property, (ii) immediately prior to any actual or deemed distribution to a Member of any Company property (other than a distribution of cash that is not in redemption or retirement of a Membership Interest), or (iii) upon the occurrence of any other event provided in such Treasury Regulation, the Capital Accounts of all Members and the Carrying Value of each Company property immediately prior to such issuance or adjustment shall be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Company property, as if such Unrealized Gain or

Unrealized Loss had been recognized on an actual sale of each such property immediately prior to such issuance or adjustment and had been allocated to the Members at such time pursuant to Section 5.1 in the same manner as any item of gain or loss actually recognized during such period would have been allocated; *provided*, *however*, that such adjustments shall be made only if the Board in good faith determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company. In determining such Unrealized Gain or Unrealized Loss, the aggregate cash amount and Fair Market Value of all Company assets (including cash and cash equivalents) immediately prior to the event triggering such adjustment shall be determined by the Board using such method of valuation as it may adopt. The Board shall allocate such aggregate value among the assets of the Company (in such manner as it determines) to arrive at a Fair Market Value for individual properties.

4.3 Contributions of Contributed Property. Unless otherwise determined by the Board, all future Capital Contributions shall be made in readily available cash funds. Unless otherwise determined by the Board, to the extent that any subsequent Capital Contribution is made in the form of Contributed Property, any costs or expenses associated with the transfer, assignment, conveyance or recordation of such Contributed Property, including any taxes in respect thereof, shall be borne by the Member making such contribution, and any such costs or expenses, whether paid directly by the Member or reimbursed to the Company, shall not be deemed Capital Contributions.

ARTICLE V
ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations for Capital Account Purposes. For purposes of maintaining the Capital Accounts, the Company's Net Profit and Net Loss shall be allocated among the Members in each taxable year (or portion thereof) as provided herein below.

(a) *General*. Except as otherwise provided in this Agreement, Net Profit or Net Loss for a Fiscal Year shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 5.1(b), the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to Section 10.2(d)(ii) if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 10.2(d)(ii) to the Members immediately after making such allocation *minus* (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets; *provided*, *however*, that the allocations pursuant to this Section 5.1(a) may be adjusted to the extent the Board determines that such adjustment is necessary to comply with the provisions of section 704(b) of the Code and the Treasury Regulations thereunder and the other relevant provisions of this Agreement.

(b) *Special Allocations*. Notwithstanding any other provision of this Section 5.1, the following special allocations shall be made for such taxable period in the following order and priority:

(i) *Company Minimum Gain Chargeback*. Notwithstanding the other provisions of this Section 5.1, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be allocated items of Company income and gain for such taxable period (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(f)(6) and (g)(2) and section 1.704-2(j)(2)(i), or any successor provisions. This Section 5.1(b)(i) is intended to comply with the Company Minimum Gain chargeback requirement in Treasury Regulation section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt*. Notwithstanding the other provisions of this Section 5.1 (other than Section 5.1(b)(i)), except as provided in Treasury Regulation section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Fiscal Year shall be allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent taxable periods) in the manner and amounts provided in Treasury Regulation sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii), or any successor provisions. This Section 5.1(b)(ii) is intended to comply with the chargeback of items of income and gain requirement in Treasury Regulation section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset*. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulation sections 1.704-1(b)(2)(ii)(d)(4) through (6), items of Company income and gain (including Simulated Gain) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations promulgated under section 704(b) of the Code, the deficit balance, if any, in such Member's Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible; *provided*, that an allocation pursuant to this Section 5.1(b)(iii) shall be made only if and to the extent that such Member would have a deficit in such Member's Adjusted Capital Account after all other allocations provided in this Article V have been tentatively made as if this Section 5.1(b)(iii) were not a part of this Agreement. This Section 5.1(b)(iii) is intended to be a "qualified income offset" as that term is used in Treasury Regulation section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) *Stop Loss*. No amount of loss or deduction shall be allocated pursuant to Section 5.1(a) to the extent that such allocation would cause any Member to have a deficit balance in its Adjusted Capital Account at the end of such Fiscal Year (or increase any existing deficit balance in its Adjusted Capital Account). All loss and deductions in excess of the limitation set forth in the preceding sentence shall be allocated among such other Members, who have positive Adjusted Capital Account balances, in proportion thereto until each Member's Adjusted Capital Account balance is reduced to zero.

(v) *Gross Income Allocations*. In the event any Member has a deficit balance in its Capital Account at the end of any Fiscal Year in excess of the amount such Member is deemed obligated to restore pursuant to Treasury Regulations sections 1.704-2(g) and 1.704-2(i)(5), such Member shall be specially allocated items of Company gross income, gain and Simulated Gain in the amount of such excess as quickly as possible; *provided*, that an allocation pursuant to this Section 5.1(b)(v) shall be made only if and to the extent that such Member would have a deficit balance in its Capital Account after all other allocations provided in this Section 5.1 have been tentatively made as if this Section 5.1(b)(v) and Section 5.1(b)(iii) were not in the Agreement.

(vi) *Nonrecourse Deductions*. Nonrecourse Deductions for any taxable period shall be allocated to the Members in accordance with their relative Common Percentage Interests.

(vii) *Member Nonrecourse Deductions*. Member Nonrecourse Deductions for any Fiscal Year shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to such Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, such Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

(viii) *Nonrecourse Liabilities.* For purposes of Treasury Regulation section 1.752-3(a)(3), the Members agree that Nonrecourse Liabilities of the Company in excess of the sum of (A) the amount of Company Minimum Gain and (B) the total amount of Nonrecourse Built-in Gain shall be allocated among the Members in accordance with their relative Common Percentage Interests.

(ix) *Curative Allocation*. Notwithstanding any other provision of this Section 5.1, other than the Required Allocations, the Required Allocations shall be taken into account in making the Agreed Allocations so that, to the extent possible, the net amount of items of income, gain, loss or deduction allocated to each Member pursuant to the Required Allocations and the Agreed Allocations, together, shall be equal to the net amount of such items that would have been allocated to each such Member under the Agreed Allocations had the Required Allocations and the related Curative Allocations not otherwise been provided in this Section 5.1. It is the intention of the Members that allocations pursuant to this Section 5.1(b)(ix) be made among the Members in a manner that is likely to minimize economic distortions.

(x) *Simulated Depletion*. Simulated Depletion for each Depletable Property, and Simulated Loss upon the disposition of a Depletable Property, shall be allocated among the Members in proportion to their shares of the Simulated Basis in such property.

(c) *Allocations on Liquidation*. Notwithstanding any other provisions of this Article V, after taking into account the special allocations in Section 5.1(b), in the year in which the Company liquidates pursuant to Article X and all subsequent years (and for any prior years with respect to which the due date (without regard to extensions) for the filing of the Company's federal income tax return has not passed as of the date of the liquidation), all items of income, gain, loss and deduction of the Company shall be allocated among the Members in a manner reasonably determined by Board as shall cause to the nearest extent possible the Capital Account of each Member to equal the amount to be distributed to such Member pursuant to Section 10.2(d)(ii).

5.2 Allocations for Tax Purposes.

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Section 5.1.

(b) Notwithstanding any provisions contained herein to the contrary, solely for federal (and applicable state and local) income tax purposes, items (including deemed items) of income, gain, depreciation, amortization, gain or loss with respect to property for which a Book-Tax Disparity exists, shall be allocated in a manner that seeks to eliminate the variation between the Company's tax basis in such property and its Carrying Value, and such allocations shall be made in accordance with the "remedial method" provided in Treasury Regulations section 1.704-3(d).

(c) For the proper administration of the Company, the Board shall adopt such conventions as it deems appropriate in determining the amount of depreciation, amortization and cost recovery deductions.

(d) All items of income, gain, loss, deduction and credit recognized by the Company for federal income tax purposes and allocated to the Members in accordance with the provisions hereof shall be determined without regard to the election under section 754 of the Code that will be made by the Company; *provided*, *however*, that such allocations, once made, shall be adjusted (in any manner determined by the Board) as necessary or appropriate to take into account those adjustments permitted or required by sections 734 and 743 of the Code.

5.3 Income Tax Allocations with Respect to Depletable Properties.

(a) Cost and percentage depletion deductions with respect to any Depletable Property shall be computed separately by the Members rather than the Company pursuant to Section 613A(c)(7)(D) of the Code. Except as otherwise required by Section 704(c) of the Code (which for the avoidance of doubt shall be applied using the method specified for the relevant asset under Section 5.2(b)) and Treasury Regulation Section 1.613A-3(e)(5), for purposes of such computations, the federal income tax basis of each Depletable Property shall be allocated to each Member pro rata, in accordance with the such Member's Common Percentage Interest as of the time such Depletable Property is acquired by the Company (and any additions to such federal income tax basis resulting from expenditures required to be capitalized in such basis shall be

allocated among the Members in a manner designed to cause the Members' proportionate shares of such adjusted federal income tax basis to be in accordance with their proportionate Common Percentage Interests as determined at the time of any such additions) and shall be reallocated among the Members pro rata, in accordance with the Members' Common Percentage Interests as determined immediately following the occurrence of an event giving rise to an adjustment to the Carrying Values of the Company's Depletable Properties pursuant to Section 4.2(d). The Company shall inform each Member of such Member's allocable share of the federal income tax basis of each Depletable Property promptly following the acquisition of such Depletable Property by the Company, any adjustment resulting from expenditures required to be capitalized in such basis, and any reallocation of such basis as provided in the previous sentence, together with such other information that a Member may reasonably request in connection with the Member's (or its direct or indirect owner) obligation to file its U.S. federal, state or local income tax returns.

(b) For purposes of the separate computation of gain or loss by each Member on the taxable disposition of Depletable Property, the amount realized from such disposition shall be allocated (i) first, to the Members in an amount equal to the Simulated Basis in such Depletable Property in proportion to their allocable shares thereof and (ii) second, any remaining amount realized shall be allocated consistent with the allocation of Simulated Gains.

(c) The allocations described in this Section 5.3 are intended to be applied in accordance with the Members' "interests in partnership capital" under Section 613A(c)(7)(D) of the Code; *provided*, that the Members acknowledge and agree that special allocations of federal income tax basis, income, gain, deduction or loss, as computed for U.S. federal income tax purposes, shall be applied in order to eliminate differences between Simulated Basis and adjusted federal income tax basis with respect to Depletable Properties in accordance with the "remedial method" provided in Treasury Regulations section 1.704-3(d) (or otherwise in such manner as is consistent with the principles of Section 5.2(b)). The provisions of this Section 5.3(c) and the other provisions of this Agreement relating to allocations under Code Section 613A(c)(7)(D) are intended to comply with Treasury Regulations Section 1.704-1(b)(4)(v) and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

(d) Each Member, with the assistance of the Company, shall separately keep records of its share of the adjusted tax basis in each Depletable Property, adjust such share of the adjusted tax basis for any cost or percentage depletion allowable with respect to such property and use such adjusted tax basis in the computation of its cost depletion or in the computation of its gain or loss on the disposition of such property by the Company. Upon the request of the Company, each Member shall advise the Company of its adjusted tax basis in each Depletable Property and any depletion computed with respect thereto, both as computed in accordance with the provisions of this subsection for purposes of allowing the Company to make adjustments to the tax basis of its assets as a result of certain transfers of interests in the Company or distributions by the Company. The Company may rely on such information and, if it is not provided by the Member, may make such reasonable assumptions as it shall determine with respect thereto.

(e) The Simulated Basis of each Depletable Property shall be allocated to each Member pro rata, in accordance with the Members' Common Percentage Interests as of the time such Depletable Property is acquired by the Company (and any additions to such Simulated Basis

resulting from expenditures required to be capitalized in such Simulated Basis shall be allocated among the Members in a manner designed to cause the Members' proportionate shares of such Simulated Basis to be in accordance with their Common Percentage Interests at the time of any such additions) and shall be reallocated among the Members pro rata, in accordance with the Members' Common Percentage Interests as determined immediately following the occurrence of an event giving rise to an adjustment to the Carrying Values of the Company's Depletable Properties pursuant to Section 4.2(d).

5.4 Requirement of Distributions.

(a) Unless otherwise prohibited under the Act, distributions of assets and properties of the Company shall be made by the Company at such times and in such amounts as determined by the Board in its sole discretion out of the Available Cash of the Company. Distributions of assets and properties other than cash and cash equivalents shall be based upon the Fair Market Value of the applicable assets or properties and in accordance with the terms of this Section 5.4 as if such assets and properties were cash or cash equivalents equal to their Fair Market Value. Distributions of cash shall be made to the Members by wire transfer of immediately available funds to the account designated in writing by the relevant Member. Any distribution pursuant to this Section 5.4(a) or Section 5.4(b) shall be made to the Common Members pro rata in accordance with the Common Members' respective Common Percentage Interests.

(b) Notwithstanding the foregoing:

(i) Subject to the provisions of Section 5.4(a), and subject to any restrictions contained in any agreement to which the Company is bound (including any loan, financing or similar document), the Board may in its sole discretion (exercised in good faith) cause the Company to distribute Available Cash on or prior to each April 15, June 15, September 15 and December 15 (each an "**Estimated Tax Payment Date**"), with respect to the taxable period related to such Estimated Tax Payment Date (each, an "**Estimated Tax Period**" under the corporate estimated tax payment rules), to each Member, pro rata in accordance with the Members' respective Common Percentage Interests, to enable the Member with the highest Tax Liability to receive, in such pro rata distribution, cash sufficient to pay such Tax Liability. "**Tax Liability**" shall mean (A) the *product of* (1) the amount of net taxable income allocable to such Member pursuant to Section 5.2 for the current Estimated Tax Period and all prior Estimated Tax Periods and (2) an assumed tax rate equal to the highest maximum combined marginal federal, state and local income tax rates applicable to a corporate taxpayer organized under the laws of New York, *minus* (B) all prior distributions previously made by the Company to such Member pursuant to this Section 5.4.

(ii) Distributions pursuant to this Section 5.4(b) shall be treated as advances against, and shall reduce, any Member's entitlement to any subsequent distributions made pursuant to Section 5.4(a) or Section 10.2(d)(ii).

5.5 Withholding. To the extent the Company is required by Law to withhold or to make tax payments (including penalties, additions to tax or interest imposed with respect to such taxes) on behalf of or with respect to any Member or attributable to the status of any Member (including Company Level Taxes) ("**Tax Advances**"), the Company may withhold such amounts or make such tax payments as so required. All Tax Advances made on behalf of a Member shall be repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member pursuant to Section 5.4(a) or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member or, at the discretion of the Board, by requiring such Member promptly to reimburse the Company. If at the time of liquidation of the Company, any such Tax Advances to a Member exceed the proceeds of liquidation to the Member, such Member shall promptly repay such excess to the Company. If a distribution to a Member is actually reduced as a result of a Tax Advance, for all other purposes of this Agreement such Member shall be treated as having received the full amount of the distribution unreduced by the Tax Advance. Each Member shall provide the Company (including any Member who ceases to be a Member) with such information that the Company reasonably requests in order to determine the amount of any taxes required to be withheld with respect to such Member. Each Member of the Company hereby agrees to indemnify and hold harmless the Company and the other Member's from and against any liability from such Member's failure to repay Tax Advances. Whenever the Company is to pay any sum to any Member, the Company may, before payment, deduct from such sum any amounts that such Member owes the Company that are due or past due.

ARTICLE VI
MANAGEMENT OF THE COMPANY

6.1 Management by Managers. The Company shall be managed by a board of managers (the "**Board**", each member of the Board, a "**Manager**" and such members collectively, the "**Managers**") which Board shall collectively act as the "manager" of the Company (as such term is used in the Act), according to this Article VI and, except with respect to certain consent requirements required by the Act or provided in this Agreement, no Member, by virtue of having the status of a Member, shall have any management power or control over the business and affairs of the Company or actual or apparent authority to enter into contracts on behalf of, or to otherwise bind, the Company, and the Members shall not have any control over the day-to-day operation or management of the Company or its Subsidiaries. Except as described in the preceding sentence, (a) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Board in accordance with this Agreement and (b) the Board shall exercise such powers in compliance with this Agreement and ensure that all organizational formalities are observed with respect to the Company. Under the direction of the Board, certain activities of the Company may be conducted on the Company's behalf by the Officers as specified and authorized by the Board, who shall be agents of the Company, and the management and administration of the day-to-day business and affairs of the Company will be provided by such Officers, subject to the operating guidelines and annual and quarterly budgets established and approved by the Board. In addition to the powers that now or hereafter can be granted under the Act and to all other powers granted under any other provision of this Agreement, the Board shall have (subject to the Act and all consent rights and other limitations in this Agreement) full power and authority to do all things on such terms as they may deem necessary or appropriate to conduct, or cause to be conducted,

the business and affairs of the Company. Any Person dealing with the Company, other than a Member or a Member's Affiliate, may rely on the authority of the Board or the Officers in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance with it, regardless of whether that action actually is taken in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, each Member hereby (i) specifically delegates to the Board its rights and powers to manage and control the business and affairs of the Company, and (ii) waives its right to bind the Company, in each case as, and to the extent permitted by, the Act, except in each case with respect to certain consent requirements required by the Act or provided in this Agreement, including Section 6.3(b).

6.2 Board.

(a) *Composition*. Except as otherwise set forth herein:

(i) The Board shall consist of up to five natural persons, none of whom need be Members or residents of the State of Delaware.

(ii) EIG shall have the right to appoint up to three Managers (each, an "**EIG Manager**") for so long as EIG holds Common Units.

(iii) IntermediateCo (so long as IntermediateCo owns a number of Tema Common Units that satisfies the Tema Board Threshold) or, (B) if IntermediateCo does not own a number of Tema Common Units that satisfies the Tema Board Threshold as of the relevant time of determination but one or more Tema Qualified Transferees exists, such Tema Qualified Transferee(s), as applicable, shall have the right to appoint one Manager (the "**Tema Manager**"); *provided*, that, (x) in no event shall there be more than one Tema Manager at any given time, (y) if there exists more than one Tema Qualified Transferee at the relevant time of determination, the right to appoint the Tema Manager shall be the exclusive right of the Tema Qualified Transferee with the highest Common Percentage Interest as of such time and (z) if neither IntermediateCo nor a Tema Qualified Transferee is permitted to appoint the Tema Manager pursuant to this Section 6.2(a)(iii), EIG shall have the option (but not obligation) to appoint the Tema Manager who shall, from and after such appointment, be deemed an EIG Manager for all purposes of this Agreement.

(iv) EIG, in its sole discretion, or (B) so long as IntermediateCo or Tema and its Affiliates collectively hold a number of Tema Common Units that represent, in the aggregate, a Common Percentage Interest equal to 2.00% or more, EIG and IntermediateCo or Tema or its Affiliates, pursuant Section 3.4(h), jointly and in good faith, shall have the right to appoint one Manager (the "**Independent Manager**").

The names of the Managers as of the Effective Date are set forth on Schedule 6.2.

(b) Each Manager may vote by delivering such Manager's written proxy to another Manager, or, if a Manager is unable to attend a meeting (in person or telephonically), the

Member which appointed such Manager shall have the right to appoint another Person to serve in such Manager's place at such meeting (in person or telephonically). A Manager shall serve until such Manager resigns or is removed as provided in Section 6.6.

6.3 Powers of the Board.

(a) Subject to Section 6.3(b), the Board (and any Officer or committee duly authorized by the Board) shall have the power, right and authority to take all actions by Majority Consent which the Board deems necessary, useful or appropriate for the management and conduct of the Company's business or to the accomplishment of the purposes of the Company, except in each case with respect to certain consent requirements required by the Act or as expressly provided in this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, none of the Company or its Subsidiaries shall take any of the following actions without the approval of (w) IntermediateCo, (x) the Tema Manager (solely to the extent IntermediateCo or a Tema Qualified Transferee has the right to appoint the Tema Manager), (y) EIG and (z) the EIG Managers holding a majority of the votes allocated to the EIG Managers:

(i) Authorize, create, sell or issue any Membership Interests (or other Equity Interests), including any securities convertible into or exercisable or exchangeable for Membership Interests (or other Equity Interests), other than the creation, authorization, sale or issuance of Membership Interests that are not pari passu or senior (and shall be junior and subordinated in all respects) to the Common Units or other Equity Interests owned by IntermediateCo or any Tema Qualified Transferee other than (x) Equity Interests that constitute Preemptive Rights Interests and are otherwise sold or issued following compliance by the Company with Section 3.10 or are Exempted Securities or (y) Membership Interests sold or issued in accordance with the terms of the Approved MIP;

(ii) sell or issue any Debt Securities, including any securities convertible into or exercisable or exchangeable for Debt Securities to (A) any Member or, (B) if EIG is not a Member as of the relevant time of determination but EIG or its Affiliates own Debt Securities as of such time, EIG, in each case other than Debt Securities that constitute Preemptive Rights Interests and are sold or issued following compliance by the Company with Section 3.10;

(iii) purchase, redeem or otherwise acquire or retire any Equity Interests of the Company, other than any such purchase, redemption or acquisition of Equity Interests (A) pursuant to which the Company acquires Equity Interests from all Members on a pro rata basis, (B) pursuant to the terms of the Approved MIP (which does not circumvent the immediately preceding clause (A)), or (C) by the Company pursuant to Section 3.7;

(iv) enter into or approve any amendment, alteration, or change to, or waiver of, or modification of, any provisions of this Agreement or the Certificate or any other organizational or governing documents or any of the rights, powers,

preferences, or privileges of the Membership Interests (or other Equity Interests) owned by IntermediateCo, in each case that materially and adversely affects the rights, powers, preferences, privileges or obligations of, or related to, any of the Membership Interests (or other Equity Interests) owned by IntermediateCo in a manner different from, or with a disproportionate impact, relative to EIG with respect to such class of equity securities; *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 6.3(b)(iv); *provided*, *further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11;

(v) enter into or approve any amendment, alteration or change to, or waiver of, or modification of, the rights, powers, preferences, privileges or obligations of any Membership Interests (or other Equity Interests) owned (i) by EIG or any of its Affiliates, (ii) issued after the date hereof following compliance with Section 3.10 and (iii) with respect to which IntermediateCo did not exercise its preemptive rights pursuant to Section 3.10 in connection with the issuance thereof that (or would) materially and disproportionately adversely affects the rights, powers, preferences, privileges or obligations of any Membership Interests (or other Equity Interests) owned by IntermediateCo;

(vi) other than in connection with a transaction that constitutes a Change of Control or an IPO, cause the Company to elect to change its tax classification to be classified as an association taxable as a corporation for federal income tax purposes, or convert the business form of the Company;

(vii) other than the EIG Monitoring Agreement (which shall not be subject to this Section 6.3(b)(vii), but shall be subject to Section 6.3(b)(viii)), enter into, amend, restate, supplement, or modify any transaction, document, instrument, or agreement between (x) EIG or any of its Affiliates, on the one hand, and (y) the Company or any of its Subsidiaries, on the other hand, unless (i) the terms of such transaction, document, instrument, or agreement are at least as favorable to the Company or its Subsidiaries, in all material respects, as would have been obtained from a Third Party in a comparable arms' length transaction, or (ii) such transaction, document, instrument, or agreement constitutes a sale or issuance of Preemptive Rights Interests or Exempted Securities by the Company in compliance with Section 3.10; *provided*, that if the Company or the relevant Subsidiary thereof receives a letter or opinion (in each case in writing) from a Qualified Financial Advisor to the effect such transaction, document, instrument, or agreement is fair, from a financial point of view, to the Company or such Subsidiary (and on other terms as favorable to the Company or such Subsidiary, in all material respects, as would have been obtained from a Third Party in a comparable arms' length transaction), then such letter or opinion shall be deemed conclusive evidence that such transaction, document, instrument, or agreement is on arm's-length terms;

(viii) amend, restate, supplement, or modify any material or economic provision of the EIG Monitoring Agreement or any provision relating to the payment of monies (including any amendment, restatement, supplement or modification that has the effect of increasing the fees paid or payable by the Company or any of its Subsidiaries pursuant to the EIG Monitoring Agreement);

(ix) sell or issue any Membership Interests issued or issuable pursuant to the Approved MIP to EIG or any of its Affiliates (or any of their respective officers, directors, employees, consultants or holders of Equity Interests or debt securities);

(x) consummate a transaction (including a merger, consolidation, amalgamation or other business combination) (i) pursuant to which assets and/or Equity Interests of the Company and/or any of its Subsidiaries are acquired by EIG or any of its Affiliates (or the Company and/or any of its Subsidiaries is merged or combined with EIG or any of its Affiliates), in a manner that results in a Change of Control and (ii) in respect of which more than 10% of the value of the consideration payable to the Company or the Members, as applicable, is in cash; *provided*, that, for the avoidance of doubt, other than the EIG Monitoring Agreement (which shall not be subject to this Section 6.3(b)(x), but shall be subject to Section 6.3(b)(viii)), in no event shall this Section 6.3(b)(x) be deemed to restrict or otherwise limit the ability of the Company to enter into, amend, restate, supplement, or modify any transaction, document, instrument, or agreement between (x) EIG or any of its Affiliates, on the one hand, and (y) the Company or any of its Subsidiaries, on the other hand, in each case to the extent such transaction, document instrument or agreement is approved in accordance with Section 6.3(b)(vii);

(xi) consummate a recapitalization, refinancing or similar transaction if the proceeds that are payable to the Common Members in respect of the Common Units following such recapitalization, refinancing or similar transaction are or will be distributed on a basis other than on a pro rata basis among all Common Members based on each such Common Member's Common Percentage Interest; or

(xii) enter into any agreement or arrangement to do any of the foregoing.

6.4 Meetings of the Board.

(a) Regular meetings of the Board shall be held at least once each calendar quarter, at such times and places as may be determined by the Board. Special meetings of the Board may be called by any of the Managers. Each Member shall use commercially reasonable efforts to cause its designated Managers to attend (in person or telephonically) each regular or special meeting of the Board.

(b) Notice of the time and place of any regular meeting of the Board shall be in accordance with the meeting schedule approved by the Board or by providing notice at least

three days but no more than 30 days prior to the meeting. Special meetings of the Board may be called by providing at least 48 hours' notice prior to the meeting. Special meetings of the Board to deal with emergencies (*i.e.*, exigent circumstances) may be called by providing at least 24 hours' notice prior to the meeting, so long as each Manager provides written confirmation of receipt of notice or waives notice (including by attending (in person or telephonically) the Emergency meeting). Written notice of meetings of the Board, including the purpose of the meeting, shall be given to each Manager with the notice of the meeting. Any Manager may waive notice of any meeting by the execution of a written waiver prior or subsequent to such meeting. The attendance of a Manager at any meeting (in person or telephonically) shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the Board, need be specified in the waiver of notice of such meeting. Notice may be given by electronic mail to an electronic mail address provided in writing by a Manager, by facsimile to a facsimile number provided in writing by a Manager, by personal delivery or by national reputable courier service such as Federal Express or United Parcel Service to an address specified in writing by a Manager.

(c) The Board may adopt whatever rules and procedures relating to its activities as it may deem appropriate, *provided*, that such rules and procedures shall not be inconsistent with or violate the provisions of this Agreement or the Act, *provided*, *further*, that such rules and regulations shall permit Managers to participate in meetings by telephone or video conference or the like or by written proxy, and such participation shall be deemed attendance for purposes of determining whether a quorum is present.

(d) All meetings of the Board shall be presided over by the Chairman of the Board, who shall be selected by EIG. At each meeting, the Chairman of the Board may designate a Person to be the acting secretary of such meeting and any such Person shall make a written record of the proceedings of such meeting.

6.5 Quorum and Voting.

(a) At all meetings of the Board, the presence of a majority of the Managers (including at least one EIG Manager and the Tema Manager) shall be necessary and sufficient to constitute a quorum of the Board for the transaction of business; *provided*, that the presence of the Tema Manager shall not be necessary to constitute a quorum at a meeting of the Board to the extent that (i) the absence of the Tema Manager at the meeting of the Board called immediately previously to such meeting caused the Board to fail to reach a quorum at such previously-called meeting and (ii) such previous (and current) meeting was called in accordance with the provisions of Section 6.4.

(b) All actions and approvals of the Board shall be approved and passed at a meeting at which a quorum is present by Majority Consent, except in each case with respect to certain consent requirements required by the Act or provided in this Agreement, including in Section 6.3(b). In the event Majority Consent is required to approve and pass an action, but such Majority Consent is not obtained because of a tie, the Chairman of the Board shall be entitled to

cast an additional vote, which vote will determine the resolution of the proposed action or approval.

(c) Any Manager may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can communicate with each other.

(d) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the number of Managers required to approve such action if a meeting of the Board were to be called pursuant to this Article VI. Each written consent shall bear the date and signature of each Manager who signs the consent. A copy of such written consent shall be promptly provided (within five days of such executed consent) to the Managers.

6.6 Resignation; Removal and Vacancies.

(a) Any Manager may resign at any time by giving written notice to the Board. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. If any Manager is the subject of civil or criminal charges instituted by a Governmental Authority based upon allegations of breach or violation of securities Laws or the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq.*, or is indicted, convicted or enters a plea of no contest or nolo contendere to any felony, then such Manager shall immediately resign from the Board or the Member(s) who appointed such Manager shall immediately remove such Manager from serving as a Manager and shall appoint another Person to fill the vacancy on the Board resulting from such Manager's removal.

(b) Any Manager may be removed at any time, with or without cause, by (and only by) the Member which appointed such Manager.

(c) The removal of a Manager shall be effective only upon delivery of notice thereof to the remaining Managers. Any vacancy in the number of Managers occurring for any reason shall be filled promptly by the appointment of a new Manager by the Person(s) entitled to fill such vacancy. The appointment of a new Manager is effective upon delivery of notice thereof or at such time as shall be specified in such notice to the remaining Managers.

6.7 Discharge of Duties; Reliance on Reports.

(a) None of the Managers or any of their respective Affiliates, employees, agents or representatives shall, in their capacity as such, owe or be deemed to owe any fiduciary duty to the Company or any of its Subsidiaries or any of the Members (other than in the case of the Managers, to the Members appointing such Managers) and none of the Members or any of their respective Affiliates, employees, agents or representatives shall, in their capacity as such, owe or be deemed to owe any fiduciary duty to the Company or any of its Subsidiaries or any of the other Members, in each case it being understood that all such fiduciary duties are hereby fully and irrevocably eliminated to the maximum extent permitted by applicable Law.

(b) Each Manager may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the Board. The Board may consult with legal counsel, accountants, appraisers, consultants, investment bankers and other consultants and advisers selected by it and any act taken or omitted in good faith reliance upon the opinion of such Persons as to matters that the Managers reasonably believe to be within such Person's professional or expert competence shall be conclusively presumed to have been done in good faith and in accordance with such opinion. Neither the Board nor any individual Manager shall be responsible or liable to the Company or any Member for any mistake, action, inaction, misconduct, negligence, fraud or bad faith on the part of any Person delivering such document, advice or opinion as provided in this Section 6.7 unless, with respect to an individual Manager only, such Manager had knowledge that such Person was acting unlawfully or engaging in willful misconduct, gross negligence, bad faith or fraud.

6.8 Officers. Under the direction of the Board, certain administrative activities of the Company shall be conducted on the Company's behalf by the Officers, who shall be agents of the Company.

(a) The officers of the Company shall be such officers as the Board deems necessary (the "**Officers**"). The Officers shall be appointed by the Board. The Officer appointees as of the Effective Date are listed on Schedule 6.8. The Officers shall report to the Board as requested from time to time.

(b) The Board may appoint such other Officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

(c) The authority of any Officers of the Company shall be restricted to those actions specifically authorized by the Board in accordance with this Agreement. On the Effective Date, the Officers shall be authorized to execute this Agreement and any agreement related to the transactions contemplated hereby on behalf of the Company.

(d) Subject to any applicable employment agreement, the Officers and employees of the Company shall be required to devote their full business time, attention, skill, and best efforts to the performance of such Officer's or employee's duties and shall not engage in any other business or occupation during such Person's term of officership or employment.

(e) Notwithstanding anything in the contrary in this Agreement, the Officers, in the performance of their duties as such, shall owe to the Company and the Members duties of loyalty, good faith and due care of the type owed by the officers of a corporation to such corporation and its shareholders under the Laws of the State of Delaware.

6.9 Term of Officers.

(a) An Officer shall serve until such Officer resigns, such Officer's term expires or such Officer is removed as provided in Section 6.9(b). Any Officer of the Company

may resign at any time by giving written notice to the Board. The resignation of any Officer shall take effect upon receipt of notice or at such later time as shall be specified in such notice; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective.

(b) An Officer may be removed from office at any time with or without cause by the Board. If any vacancy shall occur in any office, for any reason whatsoever, then the Board shall have the right to appoint a new Officer to fill the vacancy.

6.10 Compensation and Reimbursement. Without limiting the Company's obligations pursuant to the EIG Monitoring Agreement, the Company shall also reimburse the Managers for all of their respective documented and reasonable out of pocket expenses relating to the Company, including in connection with their preparation for, travel to and from and attendance at Board meetings and any committees thereof; *provided*, that, with respect to the EIG Managers, the Company's reimbursement obligations pursuant to this Section 6.10 shall not be in duplication of amounts paid or payable by the Company pursuant to the EIG Monitoring Agreement

6.11 Member Meetings.

(a) *Location; Quorum; Voting*. To the extent a meeting of the Members is required by Law or this Agreement, Member meetings shall be held at such place within or without the State of Delaware specified in the notice or waivers of notice thereof. Except as provided herein or under applicable Law, the presence of Common Members holding a majority of the Common Percentage Interests of the Membership Interests, present in person or represented by proxy and entitled to vote, shall constitute a quorum at any meeting of the Members for the transaction of business, and the affirmative vote of the Members holding a majority of the Common Units shall constitute the act of the Members. Each Common Member shall be entitled to one vote for each Common Unit held by such Member. A Member may vote at a meeting by a written proxy executed by that Member and delivered to a Manager, Member, or the Secretary. A proxy shall be revocable unless it is stated to be irrevocable.

(b) *Waiver of Notice*. Attendance of a Member at a meeting (in person or telephonically) shall constitute a waiver of notice of such meeting, except where such Member attends the meeting (in person or telephonically) for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) *Action by Written Consent*. Any action required or permitted to be taken at a particular meeting may be taken without a meeting, without notice and without a vote if a consent in writing setting forth the action so taken is signed by a majority of the Members entitled to vote thereon. A copy of such written consent shall be promptly provided (within 5 days) to the Members.

(d) Any action or inaction taken by the Board or the Members shall be subject to the consent requirements required by the Act or provided in this Agreement, including Section 6.3(b).

6.12 Directors' and Officers' Insurance. As of the date hereof (and during the existence of the Company), the Company will obtain (for the Company and its Subsidiaries), and maintain, a customary directors' and officers' insurance policy pursuant to which each of the Managers and Officers will be named as beneficiaries.

ARTICLE VII
INDEMNIFICATION; LIMITATION OF LIABILITY

7.1 Right to Indemnification. Subject to the limitations and conditions as provided in this Agreement and to the fullest extent permitted by applicable Laws, each Indemnitee who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (a "**Proceeding**"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of such Person's capacity as an Indemnitee (and only in such capacity), shall be indemnified by the Company to the extent such Proceeding relates to such Person's capacity as an Indemnitee (and only in such capacity) to the fullest extent permitted by the Act, as the same exists or may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said Laws permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorneys' and experts' fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article VII shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity under this Agreement for any and all Liabilities and damages related to and arising from such Person's activities while acting in such capacity. Notwithstanding the foregoing, no Person shall be entitled to indemnification under this Section 7.1 if there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter for which such Person is seeking indemnification pursuant to this Section 7.1, (x) such Person's actions or omissions constituted bad faith, an intentional breach of this Agreement, willful misconduct on the part of such Person or fraud or (y) with respect to Officer Indemnitees only, such Officer Indemnitee breached such Officer's duty pursuant to Section 6.8(e) or acted or failed to act in a manner that constitutes gross negligence, bad faith, willful misconduct or fraud. Any indemnification pursuant to this Article VII shall be made only out of the assets of the Company and its Subsidiaries, it being agreed that none of the Members nor any of their Affiliates (other than the Company and its Subsidiaries) shall have any personal liability for such indemnification and shall have no obligation to contribute or loan any monies or property to the Company to enable it to effectuate such indemnification. The rights granted pursuant to this Article VII shall be deemed contract rights, and no amendment, modification or repeal of this Article VII shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. IT IS ACKNOWLEDGED THAT THE INDEMNIFICATION PROVIDED IN THIS Article VII COULD INVOLVE INDEMNIFICATION FOR NEGLIGENCE OR UNDER THEORIES OF STRICT LIABILITY. As used in this Agreement, intentional breach of this Agreement means that the applicable Person knew or should have known that such Person's actions or omissions would result in a breach of this Agreement.

7.2 Indemnification of Officers, Employees (if any) and Agents. The Company may indemnify and advance expenses to Persons who are not entitled to indemnification under Section 7.1, including current and former employees (if any) or agents of the Company, and those Persons who are or were serving at the request of the Company as a manager, director, officer, partner, member, trustee, employee (if any), agent or similar functionary of another foreign or domestic general partnership, corporation, limited partnership, joint venture, limited liability company, trust, employee (if any) benefit plan or other enterprise against any liability asserted against such Person and incurred by such Person in such a capacity or arising out of such Person's status as such a Person to the same extent that it may indemnify and advance expenses to a Member under this Article VII.

7.3 Advance Payment. Subject to the remaining provisions of this Section 7.3, any right to indemnification conferred in this Article VII shall include a right to be paid or reimbursed by the Company for any and all documented and reasonable fees, costs, and expenses as they are incurred by a Person entitled to be indemnified under Section 7.1 (or a Person for which the Company has elected to indemnify or advance expenses pursuant to Section 7.2) who was, is or is threatened, to be made a named defendant or respondent in a Proceeding (or applicable part of such Proceeding) in advance of the final disposition of the Proceeding (or applicable part of such Proceeding) and without any determination as to such Person's ultimate entitlement to indemnification. Any indemnification or advance of expenses under this Article VII shall be made only against a written request therefor submitted by or on behalf of the Person seeking indemnification or advance. Notwithstanding the foregoing, (a) the payment of such expenses incurred by any such Person in advance of final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of such Person's good faith belief that such Person has met the requirements necessary for indemnification under this Article VII and a written undertaking by or on behalf of such Person to promptly repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article VII or otherwise, in each case pursuant to a non-appealable order from a court of competent jurisdiction and (b) the Company shall not be required to make any advances of expenses to an Officer Indemnitee if a determination is reasonably made by the Board at any time during the course of a Proceeding based on the facts known at the time such determination is made, that such Person breached such Person's duties pursuant to Section 6.8(e), or intentionally breached any other provision of this Agreement or engaged in bad faith, willful misconduct, gross negligence or fraud.

7.4 Appearance as a Witness. Notwithstanding any other provision of this Article VII, the Company shall pay or reimburse expenses incurred by any Person entitled to be indemnified pursuant to this Article VII in connection with such Person's appearance as a witness in a Proceeding so long as such Person is not a party or threatened to be made a party to such Proceeding.

7.5 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article VII shall not be exclusive of any other right which a Person indemnified pursuant to Section 7.1 (or a Person for which the Company has elected to indemnify pursuant to Section 7.2) may have or hereafter acquire under any Laws, this Agreement, or any other agreement or otherwise.

7.6 Insurance. The Company and its Subsidiaries shall purchase and maintain indemnification insurance, at its expense, to protect itself and any other Persons from any expenses, liabilities, or losses, whether or not such expenses, liabilities or losses may be indemnified under this Article VII.

7.7 Member Notification. To the extent discretionary to the Company, the Board with Majority Consent shall approve or disapprove of indemnification or advancement of expenses under this Article VII. Any indemnification of or advance of expenses to any Person entitled or authorized to be indemnified under this Article VII shall be reported in writing to the Board with or before the notice or waiver of notice of the next Board meeting or with or before the next submission to the Board of a consent to action without a meeting and, in any case, within the twelve (12) month period immediately following the date the indemnification or advance was made. Notwithstanding the foregoing, no failure to comply with the notification provisions of this Section 7.7 shall operate to deprive a Person of any indemnification or advancement of expenses to which such Person would otherwise be entitled.

7.8 Savings Clause. If this Article VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless any Person entitled to be indemnified pursuant to this Article VII as to fees, costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article VII that shall not have been invalidated and to the fullest extent permitted by Laws.

7.9 Scope of Indemnity. For the purposes of this Article VII, references to the "Company" include all constituent entities, whether corporations or otherwise, absorbed in a consolidation or merger as well as the resulting or surviving entity. Thus, any Person entitled to be indemnified or receive advances under this Article VII shall stand in the same position under the provisions of this Article VII with respect to the resulting or surviving entity as such Person would have if such merger, consolidation, or other reorganization never occurred.

7.10 Other Indemnities.

(a) The Company acknowledges and agrees that certain Indemnitees may have rights to indemnification, advancement of expenses or insurance provided by Persons other than the Company. The Company acknowledges and agrees that the obligation of the Company under this Agreement to indemnify or advance expenses to any Indemnitee for the matters covered under this Agreement shall be the primary source of indemnification and advancement of such Indemnitee, and any obligation on the part of any Indemnitee under any Other Indemnification Agreement to indemnify or advance expenses to such Indemnitee shall be secondary to the Company's obligation and shall be reduced by any amount that the Indemnitee may collect as indemnification or advancement from the Company. Notwithstanding the foregoing, any payments made to an Indemnitee by an insurance company shall not be reduced as a result of any indemnification payments made by the Company to such Indemnitee and that such Indemnitee shall not permit any such insurance company to be subrogated to such Indemnitee's rights without the prior written consent of the Board. If the Company fails to indemnify or advance expenses to an Indemnitee as required or contemplated by this Agreement, and any Person makes

any payment to such Indemnitee in respect of indemnification or advancement of expenses under any Other Indemnification Agreement on account of such Unpaid Indemnity Amounts, such other Person shall be subrogated to the rights of such Indemnitee under this Agreement in respect of such Unpaid Indemnity Amounts and shall be third party beneficiaries with rights to enforce this Section 7.10.

(b) The Company, as an indemnifying Party from time to time, agrees that, to the fullest extent permitted by applicable Law, its obligation to indemnify Indemnitees under this Agreement shall include any amounts expended by any other Person under any Other Indemnification Agreement in respect of indemnification or advancement of expenses to any Indemnitee in connection with any Proceedings to the extent such amounts expended by such other Person are on account of any Unpaid Indemnity Amounts.

7.11 Liability of Indemnitees.

(a) Notwithstanding anything to the contrary set forth in this Agreement, no Indemnitee shall be liable for monetary damages to the Company or any of its Subsidiaries, the current or former Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement, for losses sustained or liabilities incurred as a result of any act or omission of an Indemnitee unless there has been a final and non-appealable judgment entered by a court of competent jurisdiction determining that, in respect of the matter in question, (i) the Indemnitee's acts or omissions constituted bad faith, an intentional breach of this Agreement, willful misconduct or fraud, (ii) the Indemnitee's acts or omissions were criminal or (iii) in the case of a current or former Officer (in such Officer's capacity as such), the Person breached such Person's duties pursuant to Section 6.8(e) or acted or failed to act in a manner that constituted gross negligence, willful misconduct, bad faith or fraud.

(b) The Board may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it under this Agreement either directly or by or through its agent or agents, and the Board shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the Board in good faith with Majority Consent, unless the Manager approving such action or inaction had knowledge of such misconduct or negligence.

(c) To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company or any of its Subsidiaries, the current or former Members, any Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement, any Indemnitee acting in connection with the Company's or any of its Subsidiaries' business or affairs shall not be liable, to the fullest extent permitted by Law, to the Company or any of its Subsidiaries, to any current or former Member, to any other Person who acquires an interest in a Membership Interest or to any other Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement.

(d) Any amendment, modification or repeal of this Agreement or any provision of this Agreement shall be prospective only and shall not in any way affect the limitations on the liability of the Indemnitees under this Agreement as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to

matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(e) Notwithstanding anything in this Agreement to the contrary:

(i) nothing in this Article VII shall (A) limit or waive any claims against, actions, rights to sue, other remedies or other recourse the Company or any of its Subsidiaries, any Member or any other Person may have against any Indemnitee for a breach of contract claim relating to any binding agreement to which such Indemnitee is a party (including, where applicable, this Agreement and any claim, action, suit or other remedy or recourse with respect to any failure by any Member to make a Capital Contribution required to be made by (and agreed in writing to be made by) such Member to the Company pursuant to this Agreement), other than, for the avoidance of doubt, any claim, action, suit or other remedy or recourse with respect to a breach of this Agreement by an Officer Indemnitee, current or former Manager (or as a member of a committee of the Board) or current or former Partnership Representative, in each case, solely in their respective capacities as such, which claim, action, suit or other remedy or recourse shall remain subject to the terms of this Article VII or (B) entitle any such Indemnitee to be indemnified or advanced expenses with respect to such a breach;

(ii) nothing in this Article VII shall entitle any Officer Indemnitee to indemnification or advancement of expenses under this Agreement with respect to any Proceeding initiated by or on behalf of (A) such Officer Indemnitee (other than a Proceeding by such Officer Indemnitee (x) to enforce such Officer Indemnitee's rights under this Agreement or (y) to enforce any other rights of such Officer Indemnitee to indemnification or advancement of expenses from the Company under any other agreement or at Law), including any counterclaims defended by such Officer Indemnitee in connection with any such Proceeding, unless the initiation of such Proceeding, or making of such claim, shall have been approved by the Board with Majority Consent or (B) the Company or any of its Subsidiaries against the Officer Indemnitee for breach of this Agreement; and

(iii) nothing in this Article VII shall apply to taxes other than any excise or similar taxes that represent losses, claims, damages, or similar arising from any non-tax claim by the Company pursuant to, and in accordance with, the terms and conditions hereunder.

7.12 Replacement of Fiduciary Duties. Notwithstanding any other provision of this Agreement, to the extent that any provision of this Agreement (including Section 7.13) purports or is interpreted (a) to have the effect of replacing, restricting or eliminating the duties that might otherwise, as a result of Delaware or other applicable Law, be owed by the Board or any other Indemnitee to the Company, the Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement or (b) to constitute a waiver or consent by the Company, the Members, any other Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement to any such

replacement, restriction or elimination, such provision shall be deemed to have been approved by the Board with Majority Consent, all of the Members, each other Person who acquires an interest in a Membership Interest and each other Person who is bound by this Agreement.

7.13 Standards of Conduct and Modification of Duties.

(a) Whenever the Board, or any committee of the Board, makes any determination or takes or declines to take any other action or inaction under this Agreement (whether or not qualified with a good faith standard), then, unless another express standard is expressly provided for in this Agreement, the Board, or such committee (as the case may be), shall make such determination or take or decline to take such other action or inaction in good faith and fair dealing and shall not be subject to any higher standard contemplated hereby or under the Act or any other Law or at equity. A determination, other action or failure to act by the Board or any committee of the Board (as the case may be) will be deemed to be in good faith and fair dealing so long as the Board or any such committee uses reasonable business judgment, and, to the extent permitted by applicable Law. In any proceeding brought by the Company, any Member or any Person who acquires an interest in a Membership Interest or any other Person who is bound by this Agreement challenging such action or inaction, determination or failure to act, the Person bringing or prosecuting such proceeding shall have the burden of proving that such determination, action, inaction or failure to act was not in good faith and fair dealing by clear and convincing evidence. For the avoidance of doubt, the limitations on indemnification, advancement and exculpation of monetary liability shall not be deemed to create or imply any duties or impose any standard of conduct, and in the event of any inconsistency between this Section 7.13 and the other provisions of this Article VII, this Section 7.13 shall govern.

(b) Notwithstanding anything to the contrary in this Agreement, the Board or any other Indemnitee shall have no duty or obligation, express or implied, to sell or otherwise dispose of any asset of the Company or its Subsidiaries.

(c) To the extent that, at law or in equity, a Member (in its capacity as such) owes any duties (including fiduciary duties) to the Company, any other Member or other holder of Membership Interests or any other Person pursuant to applicable Laws or this Agreement, such duty is hereby eliminated to the fullest extent permitted pursuant to Law (including Section 18-1101(c) of the Act), it being the intent of the Members that to the extent permitted by Law and except to the extent another express standard is expressly specified elsewhere in this Agreement, no Member (in its capacity as such) shall owe any duties of any nature whatsoever to the Company, the other Members or any other holders of Membership Interests or any other Person, other than the implied contractual covenant of good faith and fair dealing, and each Member may decide or determine any matter in its sole and absolute discretion taking into account solely its interests and those of its Affiliates (excluding the Company and its Subsidiaries) subject only to the implied contractual covenant of good faith and fair dealing. Except with respect to the express obligations set forth in this Agreement or any other agreement to which any Member is a party, to the maximum extent permitted by applicable Law (including Section 18-1101(e) of the Act), the Company, each Member and each other Person bound by this Agreement hereby waives any claim or cause of action against, and hereby eliminate all Liabilities of, each Member, solely in its capacity as a Member, for any breach of any duty (including fiduciary duties) to the Company, the other Members or any other holders of

Membership Interests or any other Person. Nothing in this Agreement is intended to create a partnership, joint venture, agency or other relationship creating fiduciary or quasi-fiduciary duties or similar duties or obligations, or otherwise subject the Members to joint and several liability or vicarious liability or to impose any duty, obligation or liability that would arise therefrom with respect to any or all of the Members or the Company.

(d) Notwithstanding anything in this Agreement to the contrary, and without limiting Section 7.13(c), each of the Company, the Members and each other Person bound by this Agreement agrees that:

(i) none of the Managers (in their capacities as such) shall owe any fiduciary or similar duty or obligation whatsoever to the Company, any Member (other than the Member designated such Manager), any other Manager or any other Person, except to the minimum extent required by any provision of applicable Law that cannot be waived;

(ii) to the extent that, at law or in equity, a Manager (in its capacity as such) owes any duties (including fiduciary duties) to the Company, any Member (other than the Member designating such Manager), any other Manager or any other Person, any such duty is hereby waived and eliminated to the fullest extent permitted pursuant to applicable Law;

(iii) subject to clauses (i) and (ii), each Manager (in its capacity as such) may decide or determine any matter subject to the Board's Consent or approval in the sole and absolute discretion of such Manager, it being the intent of the Company, the Members, each Manager and each other Person bound by this Agreement, that each Manager (in its capacity as such) have the right to make such decisions or determinations solely on the basis of the interests such Manager desires to consider, including such Manager's own interests, the interests of the Member that designated such Member and the interests of such Member's Affiliates (excluding the Company and its Subsidiaries), and that such Manager has no duty or obligation to consider the interests of the Company or its Subsidiaries, any Member, any Manager or any other Person; and

(iv) subject to clauses (i) and (ii), the Company, each Member and each other Person bound by this Agreement hereby waives any claim or cause of action against, and hereby eliminates all Liabilities of, each Manager, solely in its capacity as a Manager, or Member for any breach of any duty (including any fiduciary duty) to the Company, the other Members, or any other holders of Membership Interests or any other Person (other than, for the avoidance of doubt, the Member who appointed such Manager).

(v) to the fullest extent permitted by applicable Law, the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to any of EIG, the EIG Managers, IntermediateCo, Tema, or the Tema Manager. The Company renounces any interest or expectancy of the Company or any of its Subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are

from time to time presented to any such Persons (or any of their respective equity holders or Affiliates). Neither EIG, the EIG Managers, IntermediateCo, Tema, or the Tema Manager (or any of their respective equity holders or Affiliates) who acquires knowledge of a potential transaction, agreement, arrangement, or other matter that may be an opportunity for the Company or any of its Subsidiaries, shall have any duty to communicate or offer such opportunity to the Company or any of its Subsidiaries, and any such Person (or any of their respective equity holders or Affiliates) shall not be liable to the Company or any of its Subsidiaries or to any of the Members or Managers for breach of any fiduciary or other duty by reason of the fact that any such Persons (or any of their respective equity holders or Affiliates) pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Company or any of its Subsidiaries.

ARTICLE VIII
TAXES

8.1 **Tax Returns**. EIG shall, at the Company's expense, have exclusive control over the preparation and filing of all federal, state, local and foreign tax returns of the Company, including the making of any tax determinations or elections (subject to Section 6.3(b)(vi)). IntermediateCo shall have the right, upon its request, to review draft versions of such tax returns reasonably in advance of their filing (to the extent practicable), and EIG shall in good faith consider any comments thereon received from IntermediateCo. Upon request by EIG or the Company, each Member shall furnish to the Company all pertinent information in its possession relating to Company operations that is reasonably necessary to enable the Company's tax returns to be prepared and filed. EIG shall have the right, upon its request, to review draft versions of all federal, state, local and foreign tax returns prepared or required to be filed by IntermediateCo reasonably in advance of their filing (to the extent practicable), and IntermediateCo shall in good faith consider any comments thereon received from EIG.

8.2 **Tax Controversies**.

(a) EIG shall: (i) serve as the "partnership representative" of the Company (the "**Partnership Representative**") for purposes of Section 6223 of the Code and any similar provisions of state, local and foreign Law; (ii) have exclusive authority (1) to represent the Company (at the Company's expense) in connection with all audits or examinations by Tax authorities of the Company's affairs and any Company-related tax items, including resulting administrative and judicial proceedings, (2) to sign consents and to enter into settlements and other agreements with such Tax authorities with respect to any such audits, examinations or proceedings, (3) to expend Company funds for professional services and costs associated therewith, (4) in its sole discretion, determine whether the Company (either in its own behalf or on behalf of the Members) contests or continues to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority, and (5) to make any elections or determinations it may choose regarding the administration of all Tax matters, including any Tax audit, examination or proceeding; and (iii) appoint the "designated individual" of the Company within the meaning of Treasury Regulation section 301.6223-1. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes)

will be paid by such Member, and if required to be paid (and actually paid) by the Company, will be recoverable from such Member as provided in Section 5.4.

(b) Each Member hereby agrees to (i) take such actions as may be required to effect EIG's designation as the Partnership Representative or the designation of the designated individual, (ii) provide any information and take such actions as may be requested by the Partnership Representative in order to determine whether any Company Level Taxes may be modified pursuant to the Partnership Tax Audit Rules, (iii) upon the request of the Partnership Representative, take such action as may be necessary to modify or otherwise reduce the amount of any proposed or potential Company Level Taxes, and (iv) upon the request of the Partnership Representative, take such other actions as may be required to effect any election or procedure under the Partnership Tax Audit Rules.

(c) The Company shall promptly, following the written request of the Partnership Representative, reimburse the Partnership Representative (and any other Person properly acting as the "partnership representative" or "designated individual" for any period or periods) for any and all expenses (including legal and accounting fees, claims, liabilities, losses and damages) incurred by the Partnership Representative.

8.3 Tax Matters.

(a) The Company and each of its Members (i) shall treat the Company as a new partnership for U.S. federal (and applicable state and local) income tax purposes formed by EIG and IntermediateCo in a transaction described in Revenue Ruling 99-5, Situation 2, following the confirmation of the Plan, (ii) shall treat IntermediateCo, for U.S. federal (and applicable state and local) income tax purposes, as the continuation or successor partnership of Rosehill Operating Company, LLC (as it existed prior to the Contribution), and (iii) shall not take any position in any audit, proceeding, examination, return or statement, in each case, relating to taxes, that is inconsistent with or contrary to any of the foregoing clauses (i) or (ii).

(b) On the date hereof or as soon as practicable thereafter, each Member shall provide the Company with a properly executed and completed IRS Form W-9 (or applicable IRS Form W-8).

(c) IntermediateCo shall, at its sole expense, have the right to copies of any material correspondence received from taxing authorities in respect of audits of the income tax returns of the Company.

(d) EIG shall, at its sole expense, have the right to copies of any material correspondence received from taxing authorities in respect of audits of the income tax returns of IntermediateCo.

(e) Without limiting of any of EIG's rights and authorities under the foregoing provisions of this Article VIII: (i) EIG and IntermediateCo shall cooperate fully, as and to the extent reasonably requested by the other, in exchanging information or documents and in keeping each other reasonably and timely informed, in each case, in connection with (A) the filing of tax returns or the Company or IntermediateCo and (B) any audit, examination or proceeding with

respect to taxes of the Company or IntermediateCo; and (ii) such cooperation shall include (A) the retention and (upon the other's request) the provision of records and information which are reasonably relevant to any such audit and (B) making employees available on a mutually convenient basis to provide additional information and explanation of any related material provided pursuant to this paragraph (e).

ARTICLE IX
BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

9.1 Maintenance of Books. The Company shall keep books and records of accounts (including a list of the names, addresses, Capital Contributions and Membership Interests of all Members) and shall keep minutes of the proceedings of the Board. The books of account for the Company shall be maintained on an accrual basis in accordance with the terms of this Agreement and GAAP, except that the Capital Accounts of the Members shall be maintained in accordance with Section 4.2. The accounting year of the Company shall be the Fiscal Year. Section 18-305(a) of the Act (entitled "Access to and Confidentiality of Information; Records") shall not apply or be incorporated into this Agreement and the Members hereby waive any rights under such sections of the Act, in each case other than with respect to the Initial Members.

9.2 Tax Information. The Company shall deliver to each of its Members the following schedules and tax returns:

(a) within 150 days after the Company's Fiscal Year end, a final Schedule K-1; and

(b) within 60 days after the end of each fiscal quarter of the Company, estimated tax reporting information with respect to such fiscal quarter.

9.3 Accounts. The Officers or designated Members of the Company shall establish and maintain one or more separate bank and investment accounts and arrangements for the Company's funds in the Company's name with financial institutions and firms that the Board may determine. The Company may not commingle the Company's funds with the funds of any other Person except for any Subsidiary of the Company. All such accounts shall be and remain the property of the Company and all funds shall be received, held and disbursed for the purposes specified in this Agreement.

9.4 Financial Statements and Reports. The Company shall deliver, which delivery may be made via Intralinks or a comparable online data system, to (a) each Member which, with its Affiliates, holds at least 5% of the Common Units (other than any Membership Units issued pursuant to the Management Incentive Plan) (*provided*, that for purposes of the foregoing, each Member and its Affiliates shall not be deemed to hold less than 5% of the Common Units if such Member and its Affiliates hold less than such amount as a result of the issuance of Exempted Securities), (b) any Third Party acquirer under Section 3.7; *provided*, that a proposed Third Party acquirer shall be required to execute a confidentiality agreement reasonably acceptable to the Board prior to receiving any information or access thereto pursuant to this Section 9.4, and (c) any Person to whom any Initial Member who has rights under clause (a) or any of its Affiliates is proposing to encumber or otherwise pledge Common Units in connection with obtaining any

financing from such Person with respect to an Initial Member or any of its Affiliates; *provided*, that such Person shall be required to execute a confidentiality agreement reasonably acceptable to the Board prior to receiving any information or access thereto pursuant to this Section 9.4;

(a) within 120 days after the end of each Fiscal Year, (i) audited consolidated financial statements of income and cash flows of the Company and its Subsidiaries for such Fiscal Year, (ii) an audited consolidated balance sheet of the Company and its Subsidiaries as of the end of such Fiscal Year and (iii) a reserve report audited or prepared by a third party. The annual statements required under clauses (i) and (ii) shall be prepared by an independent accounting firm designated by the Board and in accordance with GAAP;

(b) within 60 days of the end of any fiscal quarter (for the first three fiscal quarters of the Company's Fiscal Year), quarterly consolidated financial statements of the Company and its Subsidiaries for the previous quarter prepared in accordance with GAAP (*provided*, that the footnotes associated with such financial statements are not required to conform to GAAP, and such statements may be subject to normal year-end adjustments);

(c) simultaneously with delivery to the Board, the Company's annual budget for each of the Company's Fiscal Year;

(d) upon the reasonable request by the Member, such additional schedules as are needed by such Member to prepare its financial statements in accordance with GAAP; *provided* that any incremental out-of-pocket expenses incurred by the Company in connection with the preparation or delivery of such schedules shall be borne by such Member.

ARTICLE X
DISSOLUTION, LIQUIDATION, AND TERMINATION

10.1 Dissolution. Subject to the provisions of Section 10.2 and any applicable Laws, the Company shall wind up its affairs and dissolve only on the first to occur of the following (each a "**Dissolution Event**"):

(a) approval of dissolution pursuant to Unanimous Consent;

(b) the consummation of a sale of all or substantially all of the assets of the Company (not in connection with a Change in Control); or

(c) entry of a decree of judicial dissolution of the Company in accordance with the Act.

Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company will not terminate until the assets of the Company have been liquidated and the assets distributed as provided in Section 10.2 and the Certificate has been canceled.

10.2 Liquidation and Termination. In connection with the winding up and dissolution of the Company, EIG shall act as a liquidator ("**Liquidator**"), unless otherwise determined by the Board. The Liquidator shall proceed diligently to wind up the affairs of the

Company in an orderly manner and make final distributions as provided herein and in the Act. The Liquidator shall use commercially reasonable efforts to complete the liquidation of the Company as soon as practicable (and within one year after an applicable Dissolution Event); *provided*, that such period may be extended for up to an additional one-year period by the Board. The costs of liquidation shall be borne as a Company expense (including the costs and expenses of the Liquidator, in its capacity as such). Until final distribution, the Liquidator shall continue to operate the Company properties for a reasonable period of time to allow for the sale of all or a part of the assets thereof pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). The steps to be accomplished by the Liquidator are as follows:

(a) as promptly as possible after approval of the winding up and dissolution of the Company and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities, and operations through the last day of the calendar month in which the winding up and dissolution is approved or the final liquidation is completed, as applicable;

(b) the Liquidator shall cause any notices required by applicable Law to be sent to each known creditor of and claimant against the Company in the manner described by applicable Law;

(c) upon approval of the winding up and dissolution of the Company, the Liquidator shall, unless otherwise determined by the Board, be prohibited from distributing assets in kind and shall instead sell for cash the equity of the Company or the assets of the Company at the best price available (pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). The property of the Company shall be liquidated as promptly as is consistent with obtaining the Fair Market Value thereof. The Liquidator may sell all of the Company property, including to one or more of the Members (pursuant to, and in accordance with, this Agreement (including the consent rights under Section 6.3(b)). If any assets are sold or otherwise liquidated for value, the Liquidator shall proceed as promptly as practicable in a commercially reasonable manner to implement the procedures of this Section 10.2(c); and

(d) subject to the terms and conditions of this Agreement any applicable Law (including the Act), the Liquidator shall distribute the assets of the Company in the following order of priority:

(i) *First*, the Liquidator shall pay, satisfy or discharge from Company assets all of the debts, liabilities and obligations of the Company, or otherwise make adequate provision for payment, satisfaction and discharge thereof; *provided*, *however*, that such payments shall not include any Capital Contributions described in Article IV or any other obligations of the Members created by this Agreement; and

(ii) *Second*, all remaining assets of the Company shall be distributed to the Members in accordance with Section 5.4(a).

(e) All distributions to the Members pursuant to Section 10.2(d)(ii) shall be in the form of cash, unless the Board otherwise determines.

(f) When the Liquidator has complied with the foregoing liquidation plan, the Liquidator (or the Board), on behalf of all Members, shall execute, acknowledge and cause to be filed a certificate of cancellation pursuant to the Act.

10.3 Provision for Contingent Claims.

(a) The Liquidator shall make a reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, actually known to the Company but for which the identity of the claimant is unknown; and

(b) If there are insufficient assets to both pay the creditors pursuant to Section 10.2 and to establish the provision contemplated by Section 10.3(a), subject to applicable Law, the claims shall be paid as provided for in accordance to their priority, and, among claims of equal priority, ratably to the extent of assets therefor.

10.4 Deficit Capital Accounts. Notwithstanding anything contained in this Agreement or any custom or rule of law to the contrary, no Member shall have any obligation to restore any negative balance in its Capital Account upon liquidation of the Company.

ARTICLE XI
AMENDMENT OF THE AGREEMENT

11.1 Amendments to be Adopted by the Company. Each Member agrees that an appropriate Manager or Officer of the Company, in accordance with and subject to the limitations contained in Article VI, may execute, swear to, acknowledge, deliver, file and record whatever documents may be required to reflect:

(a) a change in the name of the Company in accordance with this Agreement, the location of the principal place of business of the Company or the registered agent or office of the Company which has been approved by the Board;

(b) admission or substitution of Members whose admission or substitution has been made in accordance with this Agreement;

(c) a change that the Board believes is reasonable and necessary or appropriate to qualify or continue the qualification of the Company as a limited liability company under the Laws of any state or that is necessary or advisable in the opinion of the Board to ensure that the Company will not be taxable as a corporation for federal income tax purposes; and

(d) an amendment that is necessary, in the opinion of counsel, to prevent the Company or its Officers from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, or "plan asset" regulations adopted under the Employee Retirement Income Security Act of 1974, as amended, whether or not substantially similar to plan asset regulations currently applied or proposed by the United States Department of Labor.

11.2 Amendment Procedures. ~~[Subject to ongoing negotiation]~~

(a) Except as provided in Section 11.1, subject to Section 6.3(b) and the other limitations contained in Article VI, all amendments, waivers or modification, to this Agreement must be in writing and signed by each of the Members holding collectively a Common Percentage Interest of at least 51%; *provided*, *however*, that:

(i) any amendment, modification, alteration, or change of any of the rights of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) set forth in Section 6.3(b) (or any of the provisions of Section 1.3 or any definitions, in each case to the extent related thereto) shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be);

(ii) other than in connection with the immediately preceding clause (i), any amendment, modification, alteration, or change of this Agreement that nullifies or overrides the express rights, obligations or liabilities of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) hereunder shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be);

(iii) other than in connection with the immediately preceding clause (i) or clause (ii), any amendment, alteration, or change to, or waiver of, or modification of, any provisions of this Agreement or any of the rights, powers, preferences, or privileges of the Membership Interests (or other Equity Interests) owned by IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) in each case that materially and adversely affects the rights, powers, preferences, privileges or obligations of, or related to, any of the Membership Interests (or other Equity Interests) owned by IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) in a manner different from, or with a disproportionate impact, relative to EIG or any of its Affiliates who are holders of Equity Interests, shall require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be); *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 11.2(a)(iii); *provided*, *further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11; and

(iv) other than in connection with the immediately preceding clause (i), clause (ii), or clause (iii), the Company shall provide IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) with at least five (5) Business Days' prior written notice of the effectiveness of any amendment, modification, alteration, or change of this Agreement that (A) materially or adversely affects the rights, remedies, obligations, or liabilities of IntermediateCo

(or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) and (B) does not otherwise require the prior written consent of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) pursuant to Sections 11.2(a)(i), 11.2(a)(ii) or 11.2(a)(iii), and during such five (5) Business Day period, EIG (or the Company's majority equity holder at such time) shall be required to consult in good faith with, and reasonably and in good faith take into consideration any reasonable comments or recommendations proposed in good faith by, IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) with respect to the matters set forth in such proposed amendment, modification, alteration, or change prior to the effectiveness thereof; *provided*, that the Members acknowledge and agree that the amendments contemplated by Section 3.11 for purposes of incorporating the terms and conditions of the Approved MIP (pursuant to, and in accordance with, the terms and conditions herein) are not within the scope of this Section 11.2(a)(iv); *provided, further*, that any such terms and conditions of the Approved MIP (or the Management Incentive Plan) do not breach or violate an of the rights of IntermediateCo set forth in Section 3.11.

(b) The rights of IntermediateCo (or Tema or its Affiliates, pursuant to Section 3.4(h), as the case may be) set forth in Section 11.2(a) are personal to IntermediateCo, Tema and its Affiliates, as applicable, and shall be automatically become null, void, and of no force or effect at such time as none of IntermediateCo, Tema or its Affiliates own any Equity Interests of the Company.

(c) All amendments, waivers or modification to this Agreement will be sent to each Member promptly after the effectiveness thereof.

ARTICLE XII
MEMBERSHIP INTERESTS

12.1 **Certificates**. Membership Interests shall not be certificated unless otherwise approved by, and subject to the provisions set by the Board.

12.2 **Registered Holders**. The Company shall be entitled to recognize the exclusive right of a Person registered on its books and records as the owner of the indicated Membership Interest and shall not be bound to recognize any equitable or other claim to or interest in such Membership Interest on the part of any Person other than such registered owner, whether or not it shall have express or other notice thereof, except as otherwise provided by applicable Law; *provided*, *however*, that unless prohibited by applicable securities Laws, this Section 12.2 shall not apply to an Initial Member in the event that such Initial Member or any of its Affiliates encumbers or otherwise pledges Common Units in connection with obtaining any financing with respect to such Initial Member or any of its Affiliates (or any enforcement taken with respect to such encumbrance or pledge).

12.3 **Security**. For purposes of providing for Transfer of, perfecting a Security Interest in, and other relevant matters related to, a Membership Interest, the Membership Interest will be deemed to be a "security" subject to the provisions of Articles 8 and 9 of the Delaware Uniform

Commercial Code and any similar Uniform Commercial Code provision adopted by the State of Delaware or any other relevant jurisdiction.

12.4 Nonvoting Equity Securities. Notwithstanding anything in this Agreement to the contrary, the Company shall not issue any non-voting equity securities as and to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code as in effect on the date of this Agreement; *provided*, *however*, that the foregoing restriction (a) will not have any further force or effect beyond that required under said Section 1123(a)(6), (b) will have such force and effect only for so long as such Section 1123(a)(6) is in effect and applicable to the Company, and (c) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

ARTICLE XIII
GENERAL PROVISIONS

13.1 Entire Agreement. This Agreement (including the Exhibits and Schedules attached hereto) constitutes the entire agreement of the parties with respect to the subject matter hereof and supersede (a) all prior oral or written proposals, term sheets or agreements, (b) all contemporaneous oral proposals or agreements and (c) all previous negotiations and all other communications or understandings between the Members with respect to the subject matter hereof.

13.2 Waivers. Neither action taken (including any investigation by or on behalf of any Party) nor inaction pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained herein by the Party not committing such action or inaction. A waiver by any Member of a particular right, including breach of any provision of this Agreement, shall not operate or be construed as a subsequent waiver of that same right or a waiver of any other right.

13.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legal representatives, successors and permitted assigns.

13.4 Governing Law; Severability.

(a) THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED AND SHALL BE CONSTRUED, INTERPRETED AND GOVERNED PURSUANT TO AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES WHICH, IF APPLIED, MIGHT PERMIT OR REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) In the event of a direct conflict between the provisions of this Agreement and any mandatory provision of the Act or Laws, the applicable provision of the Act or other Laws, as the case may be, shall control. If any provision of this Agreement, or the application thereof to any Person or circumstance, is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by the Act or other Laws, as the case may be.

13.5 Further Assurances. Subject to the terms and conditions set forth in this Agreement, each of the Parties agrees to use all commercially reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement. In case, at any time after the execution of this Agreement, any further action is necessary or desirable to carry out its purposes, the proper authorized officer, directors, managers, or equity holders of the Parties shall take or cause to be taken all such necessary action.

13.6 Exercise of Certain Rights. Except for rights in this Agreement, no Member may maintain any action for partition of the property of the Company.

13.7 Counterparts. This Agreement may be executed in multiple counterparts and delivered by facsimile or electronic transmission (including portable document format), each of which, when executed, shall be deemed an original, and all of which shall constitute but one and the same instrument binding on all the parties hereto.

13.8 Information. The Members acknowledge that they and their respective appointed Managers shall receive information from or regarding the Company and its Subsidiaries in the nature of trade secrets or that otherwise is confidential information, non-public, and proprietary information (as further defined below in this Section 13.8, "**Confidential Information**"), the release of which could be damaging to the Company or Persons with which the Company conducts business. Each Member shall hold in strict confidence, and shall require that such Member's appointed Managers hold in strict confidence, any Confidential Information that such Member or such Member's appointed Managers, and each Member shall not, and each Member shall require that such Member's appointed Managers agree not to, disclose such Confidential Information to any Person other than another Member, Manager, Officer of the Company, or otherwise use such information for any purpose other than to evaluate, analyze, report (to its investors, any Governmental Authorities, or otherwise), and keep apprised of the Company's assets and its interest therein and for the internal use thereof by a Member or its Affiliates, except for disclosures (a) to comply with any Laws (including applicable stock exchange or quotation system requirements), *provided*, that, if permitted by Law, a Member or Manager must notify (to the extent legally permissible) the Company promptly of any disclosure of Confidential Information which is required by Law, and any such disclosure of Confidential Information shall be to the minimum extent required by Law and, (b) to Affiliates, partners, members, equity holders, investors, directors, officers, employees, agents, attorneys, consultants, lenders, professional advisers or representatives of the Member or Manager or their Affiliates (*provided*, that such Member or Manager shall be responsible for assuring such Affiliates' partners', members', equity holders', investors', directors', officers', employees', agents', attorneys', consultants', lenders', professional advisers' and representatives' compliance with the terms hereof, except to the extent any such Person who is not an Affiliate, partner, member, equity holder, director, officer or employee of such Member or Manager has been advised to treat as confidential such Confidential Information, and such Member or Manager, as the case may be, shall be responsible for a breach by any such Persons), or to Persons to which that Member's Membership Interest may be Transferred as permitted by this Agreement, but only if the recipients of such information have agreed to be bound by customary confidentiality undertakings substantially similar to this Section 13.8, (c) of information that a Member also has

received from a source independent of the Company and that such Member reasonably believes such source obtained without breach of any obligation of confidentiality to the Company, (d) of information obtained prior to the formation of the Company, *provided*, that this clause (d) shall not relieve any Member or any of its Affiliates from any obligations it may have to any other Member or any of its Affiliates under any existing confidentiality agreement, (e) that have been or become independently developed by a Member, a Manager or its Affiliates or on their behalf without using any of the Confidential Information, (f) that are or become generally available to the public (other than as a result of a prohibited disclosure by such Member or Manager or its representatives), (g) in connection with any proposed Transfer of all or part of a Membership Interest of a Member, or of working interests or other assets received in accordance with this Section 13.8, or the proposed sale of all or substantially all of a Member or its direct or indirect parent, to advisers or representatives of the Member, its direct or indirect parent or Persons to which such interest may be Transferred as permitted by this Agreement, but only if the recipients of such information have agreed to be bound by customary undertakings with respect to confidential and proprietary information similar to this Section 13.8 or (h) to the extent the Company shall have consented to such disclosure in writing. The Members agree that breach of the provisions of this Section 13.8 by such Member or such Member's appointed Managers could cause irreparable injury to the Company for which monetary damages (or other remedy at Law) would be inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member or Manager to comply with such provisions and (ii) the uniqueness of the Company's business and the confidential nature of the Confidential Information. Accordingly, the Members agree that the provisions of this Section 13.8 may be enforced by the Company (or any Member on behalf of the Company) by temporary or permanent injunction (without the need to post bond or other security therefor), specific performance or other equitable remedy and by any other rights or remedies that may be available at law or in equity. The term "**Confidential Information**" shall include any information pertaining to the Company's (or any of its Subsidiaries') business which is not available to the public, whether written, oral, electronic, visual form or in any other media, including such information that is proprietary, confidential or concerning the Company's (or any of its Subsidiaries') ownership and operation of their respective assets or related matters, including any actual or proposed operations or development project or strategies, other operations and business plans, actual or projected revenues and expenses, finances, contracts and books and records. Notwithstanding the foregoing, Members and their respective Affiliates may make disclosures to their direct and indirect limited partners, equity holders and members such information (including Confidential Information) as is customarily provided to current or prospective limited partners in private equity funds sponsored or managed by Affiliates of such Member.

13.9 Liability to Third Parties. Except as required by applicable Law or as otherwise expressly provided herein, no Member shall be liable to any Person (including any Third Party, the Company or to another Member) (a) as the result of any act or omission of a Manager or another Member or (b) for Company losses, liabilities or obligations (except as otherwise expressly agreed to in writing by such Member or as a result of such Member having made available to the Company, for its proportionate share equal to its Membership Interest, such Member's insurance program (commercial, self-funded, self-insured or other similar programs)).

13.10 No Third Party Beneficiaries. Except as set forth in Sections 3.4, 3.5, 3.6, 3.7, 11.1, 11.2 and 13.14 and Article VII, the provisions of this Agreement are for the exclusive benefit of the Members and the Company and their respective successors and permitted assigns and, solely with respect to Article VII, the indemnified Persons described therein. Except for the foregoing, this Agreement is not intended to benefit or create rights in any other Person or Governmental Authority, including (a) any Person or Governmental Authority to whom any debts, liabilities or obligations are owed by the Company or any Member, or (b) any liquidator, trustee or creditor acting on behalf of the Company, and no such creditor or any other Person or Governmental Authority shall have any rights under this Agreement, including rights with respect to enforcing the payment of Capital Contributions.

13.11 Notices. Except as otherwise provided in this Agreement to the contrary, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) emailed to the recipient (*provided*, that no undeliverable message is received by the sender) or (c) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), in each case to the applicable address set forth below:

(a) if to the Company:

Rosehill Operating Company, LLC
16200 Park Row, Suite 300
Houston, Texas 77084
Attention: R. Craig Owen; Jennifer L. Johnson
Email: cowen@rosehillres.com; jjohnson@rosehillres.com

with a copy to (which shall not constitute notice):

EIG Management Company, LLC
600 New Hampshire Ave. NW, Suite 1200
Washington, DC 20037
Attention: Kush Mathur
Email: rosehillteam@eigpartners.com;
kush.mathur@eigpartners.com

and

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attention: John Pitts, P.C.
Email: john.pitts@kirkland.com

(b) if to the Members, to each of the Members listed on Exhibit A at the address set forth therein (or set forth in a properly delivered Joinder).

13.12 Disputes.

(a) *Consent to Jurisdiction and Service of Process; Appointment of Agent for Service of Process.* EACH PARTY TO THIS AGREEMENT HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE DELAWARE COURT OF CHANCERY, OR IF, BUT ONLY IF, THE DELAWARE COURT OF CHANCERY DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, THE SUPERIOR COURT OF THE STATE OF DELAWARE, OR IF, BUT ONLY IF, THE SUPERIOR COURT OF THE STATE OF DELAWARE DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, IN EACH CASE LOCATED IN WILMINGTON, DELAWARE, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER SUCH ACTIONS OR PROCEEDINGS ARE BASED IN STATUTE, TORT, CONTRACT OR OTHERWISE), SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY (i) CONSENTS TO SUBMIT ITSELF TO THE PERSONAL JURISDICTION OF SUCH COURTS FOR SUCH ACTIONS OR PROCEEDINGS, (ii) AGREES THAT IT WILL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR LEAVE FROM ANY SUCH COURT, AND (iii) AGREES THAT IT WILL NOT BRING ANY SUCH ACTION OR PROCEEDING IN ANY COURT OTHER THAN SUCH COURTS. EACH PARTY ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE AND IRREVOCABLE JURISDICTION AND VENUE OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY NON-APPEALABLE JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH ACTIONS OR PROCEEDINGS. A COPY OF ANY SERVICE OF PROCESS SERVED UPON THE PARTIES SHALL BE MAILED BY REGISTERED MAIL TO THE RESPECTIVE PARTY EXCEPT THAT, UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, ANY FAILURE TO MAIL SUCH COPY SHALL NOT AFFECT THE VALIDITY OF SERVICE OF PROCESS. IF ANY AGENT APPOINTED BY A PARTY REFUSES TO ACCEPT SERVICE, EACH PARTY AGREES THAT SERVICE UPON THE APPROPRIATE PARTY BY REGISTERED MAIL SHALL CONSTITUTE SUFFICIENT SERVICE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF A PARTY TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(b) *Waiver of Jury Trial.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THIS AGREEMENT AND THE RELATIONSHIP THAT IS BEING ESTABLISHED UNDER THIS AGREEMENT. EACH PARTY ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF ANY OF THE OTHER PARTIES. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY

CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS.

EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAYBE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13.13 Expenses. Except with respect to certain reimbursements of expenses to which EIG and its Affiliates are entitled pursuant to the Plan, each of the Members shall be responsible for its own fees, costs and expenses (including the fees, costs and expenses of attorneys, consultants, accountants, and other advisors, travel costs and miscellaneous expenses) incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other document or agreement referred to herein or therein. For the avoidance of doubt, the Company shall have no obligation to reimburse any Member for fees, costs and expenses associated with the negotiation, preparation, execution and delivery of this Agreement.

13.14 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement or any document, agreement, or instrument delivered contemporaneously (or in connection) herewith, and notwithstanding the fact that any Member may be a partnership or limited liability company or corporation, each Member hereto, by its acceptance of the benefits of this Agreement, covenants, agrees and acknowledges that no Persons other than the Members shall have any obligation hereunder and that it has no rights of recovery hereunder against, and no recourse hereunder or under any documents, agreements, or instruments delivered contemporaneously herewith or in respect of any oral representations made or alleged to be made in connection herewith or therewith shall be had against, any former, current or future director, officer, agent, Affiliate, manager, assignee, incorporator, controlling Person, equity holder, fiduciary, representative or employee of any Member (or any of their successor or permitted assignees), against any former, current, or future general or limited partner, manager, equity holder or member of any Member (or any of their successors or permitted assignees) or any Affiliate thereof or against any former, current or future director, officer, agent, employee, Affiliate, manager, assignee, incorporator, controlling Person, equity holder, fiduciary, representative, general or limited partner, equity holder, manager or member of any of the foregoing, but in each case not including the Members (each, but excluding for the avoidance of doubt, the Members, a "**Member Affiliate**"), whether by or through attempted piercing of the corporate veil, by or through a claim (whether in tort, contract or otherwise) by or on behalf of such party against the Member Affiliates, by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, or otherwise; it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on, or otherwise be incurred by any Member Affiliate, as such, for any

obligations of the applicable Party under this Agreement or the transactions contemplated hereby, under any documents or instruments delivered contemporaneously herewith, in respect of any oral representations made or alleged to be made in connection herewith or therewith, or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, such obligations or their creation. Except to the extent otherwise expressly set forth in, and subject in all cases to the terms and conditions of and limitations herein, this Agreement may only be enforced against, and any claim or cause of action of any kind based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the Persons that are expressly named as Parties and then only with respect to the specific obligations set forth herein with respect to such Party. Each Member Affiliate is expressly intended as a third party beneficiary of this Section 13.14.

13.15 Remedies. Except as provided herein, the rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations or remedies otherwise available at Law or in equity. In addition, in the event any Proceeding involving the enforcement of this Agreement or enforcement of the rights or obligations of the Parties hereunder, the successful Member shall be entitled to recover (in addition to any other available remedy) fees, costs and expenses related to enforcing this Agreement, including reasonable and documented out-of-pocket attorneys' fees and other expenses incurred in connection with such Proceeding (including court costs).

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first set forth in this Agreement.

THE COMPANY:

ROSEHILL OPERATING COMPANY, LLC

By: _____
Name:
Title:

EIG Member:

EIG ENERGY EQUITY AGGREGATOR AGENT (DIREWOLF), INC.

By: EIG Direwolf Equity Aggregator, L.P., its sole stockholder

By: EIG Direwolf GP, LLC, its General Partner

By:_____
Name:
Title:

By:_____
Name:
Title:

FS Member:

FSEP INVESTMENTS, INC.

By: FS Energy and Power Fund, its sole stockholder

By: FS/EIG Advisor, LLC, its investment adviser

By:_____
Name: Richard K. Punches II
Title: Authorized Person

By:_____
Name: Kush Mathur
Title: Authorized Person

INTERMEDIATECO:

ROSE STEM LLC

By:_____
Name:
Title:

Address:
100 Light Street, Suite 2500
Baltimore, MD 21202
Attention:

SOLELY FOR THE PURPOSES OF ACKNOWLEDGING ITS CONSENT TO THE AMENDMENT OF THE EXISTING AGREEMENT, THE ENTRY INTO THIS AGREEMENT AND ITS WITHDRAWAL AS A MEMBER AND AS THE MANAGING MEMBER OF THE COMPANY:

EXISTING MANAGING MEMBER:

ROSEHILL RESOURCES, INC.

By:_____
Name:
Title:

EXHIBIT A

Ownership Information
(as of [●], 2020)

Members	Aggregate Capital Contribution Amount	Common Units	Common Percentage Interests
EIG			
EIG Energy Equity Aggregator Agent (Direwolf), Inc. 600 New Hampshire Ave. NW, Suite 1200 Washington, DC 20037 Attention: Kush Mathur Email: rosehillteam@eigpartners.com; kush.mathur@eigpartners.com with a copy to (which shall not constitute notice): Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attention: John Pitts, P.C. Email: john.pitts@kirkland.com	$[●]	[●]	[●]%
FSEP Investments, Inc. 600 New Hampshire Ave. NW, Suite 1200 Washington, DC 20037 Attention: Kush Mathur Email: rosehillteam@eigpartners.com; kush.mathur@eigpartners.com with a copy to (which shall not constitute notice): Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attention: John Pitts, P.C. Email: john.pitts@kirkland.com	$[●]	[●]	[●]%
Rose Stem LLC			
Rose Stem LLC 100 Light Street, Suite 2500	$[●]	[●]	[16.16]%

Baltimore, MD 21202 Attention: [●] Email: [●] with a copy to (which shall not constitute notice): McDermott Will & Emery LLP 333 SE 2nd Avenue, Suite 4500 Miami, Florida 33131-2184 Attention: Frederic L. Levenson			
Totals:	**$[●]**	**[●]**	**100%**

EXHIBIT B

EIG Monitoring Agreement

(See Attached)

EXHIBIT C

Entities Not Deemed Competitors

Each of the following entities, for so long as such entity is an Affiliate of Tema:

Gateway Gathering and Marketing Company

Rosemore, Inc.

Rosemore Holdings, Inc.

Raven Gathering System LLC

Rosemore Investments LLC

Rosemore Midstream LLC

SCHEDULE 6.2

Board of Managers

EIG Managers

Richard K. Punches II

Clayton R. Taylor

Jeannie Powers

Tema Manager

Frank Rosenberg

Independent Manager

To be appointed following the Effective Date

SCHEDULE 6.3(b)(vii)

Qualified Financial Advisors

1. [●]

SCHEDULE 6.8

Officers

David L. French	President and Chief Executive Officer
R. Craig Owen	Senior Vice President and Chief Financial Officer
David Mora	Vice President - Commercial and Reserves
Jennifer L. Johnson	Vice President, General Counsel, Corporate Secretary and Compliance Officer