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**COMPANY AGREEMENT**  
**OF**  
**MOGUL 13906 TALLHEATH LLC**

**JUNE 30, 2023**

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THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE BOARD (WHICH, IN THE DISCRETION OF THE BOARD, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

**COMPANY AGREEMENT  
OF  
MOGUL 13906 TALLHEATH LLC  
a Texas Limited Liability Company**

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**EXHIBIT A – MEMBERS OF MOGUL 13906 TALLHEATH LLC**

**COMPANY AGREEMENT  
OF  
MOGUL 13906 TALLHEATH LLC,  
A TEXAS LIMITED LIABILITY COMPANY**

This Limited Liability Company Agreement of MOGUL 13906 TALLHEATH LLC, dated to be effective as of JUNE 30, 2023, (the “**Effective Date**”), sets forth the agreement of the Members (as defined below) with respect to their ownership of Units (as defined below) in the Company (as defined below) and is binding on the Members regardless of whether a Member has signed a counterpart to this Agreement (as defined below). Capitalized terms used herein shall have the meanings set forth in Article I hereof and elsewhere herein.

**ARTICLE I  
DEFINITIONS**

1.01 **Definitions.** As used in this Agreement, the following terms have the following meanings:

“**Additional Members**” means Members added to the Company after the Effective Date of the formation of the Company pursuant to the terms and conditions of this Agreement.

“**Affiliate**” means, with reference to any Person, any other Person controlling, controlled by or under direct or indirect common control with such Person.

“**Agreement**” or “**Company Agreement**” means this Company Agreement, as may be amended and/or restated from time to time.

“**Assignee**” means a Person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member.

“**Assignor Member**” means a Member who Transfers all or a portion of its Membership Interest to an Assignee.

“**Bankrupt Member**” means (except to the extent a Simple Majority consents otherwise) any Member (a) that (i) makes an assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for the Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, termination, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in a Proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member’s or of all or any substantial part of the Member’s properties; or (b) against which a Proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Member’s consent or acquiescence, a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member’s properties has been appointed and 90 days have expired without the appointment’s having been vacated or stayed, or 90 days

have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**“Board” or “Board of Managers”** means the board of Managers of the Company.

**“Business Day”** means any day other than a Saturday, a Sunday, or a federal holiday on which national banking associations in the State of Texas are permitted or required to be closed.

**“Capital Account”** means a capital account maintained for a Member as provided by Treasury Regulation 1.704-1(b)(2)(iv) of the Regulations of the Internal Revenue Service.

**“Capital Contribution”** of a Member means the amount of money and the Net Value of property other than money contributed to the Company by such Member.

**“Cash Flow”** means, for the period in question, the amount by which the aggregate cash receipts of the Company from any source (including loans and Capital Contributions) exceed the sum of the cash expenditures of the Company plus a reasonable contingency cash reserve in the amount reasonably determined by the Board to be sufficient to meet the working capital requirements of the Company.

**“Certificate of Formation”** means the certificate of formation of the Company filed with the Secretary of State of Texas, as it may be amended or restated from time to time.

**“Change of Control”** means a change in the possession, directly or indirectly, of the power to direct and manage a Person.

**“Company”** means MOGUL 13906 TALLHEATH LLC, a Texas limited liability company.

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

**“Default Interest Rate”** means a rate per annum equal to the lesser of (a) 10% plus the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

**“Defaulting Member”** has the meaning ascribed to it in Section 15.01.

**“Effective Date”** means the effective date of this Agreement, as stated in the introductory paragraph of this Agreement.

**“Fair Value”** has the meaning ascribed to it in Section 15.05.

**“Fair Market Value”** is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

**“Family Member”** means, with respect to any natural person, such person’s spouse, parents, lineal descendants (whether natural or adopted) and siblings.

**“Fiscal Year”** means the calendar year or with respect to items taken into account in determining Capital Accounts, such other period for which such items are required to be taken into account.

**“General Interest Rate”** means a rate per annum equal to the lesser of (a) the prime rate published in The Wall Street Journal on the day the rate is determined (or the most recent day on which The Wall Street Journal was published if the paper is not published on the day the rate is determined), or, (b) the maximum rate permitted by applicable law.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

**“IRS”** means the Internal Revenue Service.

**“Investment Club”** means a limited liability company formed and operated for purposes of pooling funds from Persons for the collective ownership and management of investments.

**“Lease Agreement”** means any agreement granting a leasehold interest in the Real Property to a third-party.

**“Liquidation Event”** means (a) an event whereby the Members immediately prior to the transaction no longer own a majority of the voting interests of the Company after the transaction or (b) the sale, condemnation or exchange of all or substantially all of the assets of the Company, or other transaction that, individually or together with any similar transaction or transactions, results in the disposition of all or substantially all of the assets of the Company and occurs in the course of liquidation of the Company or upon and with respect to which event the Company is dissolved and wound up and all payments, including payments on any promissory notes, have been received.

**“Manager”** means any Person named in the Certificate of Formation as an initial manager of the Company and any Person hereafter elected as a manager of the Company as provided in this Agreement, but does not include any Person who has ceased to be a manager of the Company. Any reference to the **“Board”** or the **“Board of Managers”** shall mean the Managers and Board collectively.

**“Member”** means any member of the Company as of the Effective Date or hereafter admitted to the Company as a member as provided in this Agreement, but does not include any Person who has ceased to be a member of the Company.

**“Membership Interest”** means a Member’s membership interest in the Company and its corresponding rights including, without limitation, rights to distributions (liquidating or otherwise), allocations, and information, and to consent or approve, expressed as a percentage and as Tokens in Exhibit A, carried to the third decimal place, the numerator of which is the number of Units owned by such Member at such time, and the denominator of which is the total number of Units owned by all Members at such time. Membership Interests shall be represented by corresponding Tokens, as may be determined from time to time by the Board.

**“Mogul”** means mogul Technologies Inc. or its Affiliate.



**“Net Value”** means, in connection with a Capital Contribution of property, the value of the asset less any indebtedness to which the asset is subject when contributed.

**“Non-Sale Transfer”** means any Transfer whereby such Transfer is not made in exchange for monetary consideration.

**“New Issuance”** means to create, or authorize the creation of, or issue or obligate the Company to issue any Units or other equity interests of the Company, any additional or new classes of existing equity interests of the Company, or any security (including any debt security) that is convertible into, exchangeable or transferable for Units or other equity interests of the Company, but specifically excludes the issuance of any Units to service providers under a previously approved plan.

**“Officer”** means an individual designated or appointed by the Board to serve as an officer of the Company, having such authority and performing such duties as the Board may, from time to time, delegate to them.

**“Operations”** means all activities arising in the ordinary course of the Company’s business not constituting a Liquidation Event.

**“Person”** means an individual or a corporation, partnership, limited liability company, business trust, trust, association, or other organization, estate, government or governmental subdivision or agency, or other legal entity.

**“Proceeding”** means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative.

**“Property Contributing Member”** means the Member of the Company that initially sold or transferred the real property to the Company pursuant to the Real Estate Purchase Agreement.

**“Property Reserve Account”** means the bank account owned by the Company that holds the withheld portions of each daily Rent Distribution as set forth in Section 5.01.

**“Property Reserve Account Minimum”** means the amount equal to 5% of the purchase price of the Real Property set forth in the Real Estate Purchase Agreement.

**“Real Estate Purchase Agreement”** That certain agreement dated effective [ ], by and between Company and Property Contributing Member governing the purchase of the Real Property.

**“Real Property”** means the real property owned by the Company.

**“Rent Distributions”** means distributions made by the Company to Members from revenue actually received by the Company derived from rent from the Lease Agreement, net expenses associated with the operation and management of the Company.

**“Sale Transfer”** means any Transfer whereby such Transfer is made in exchange for monetary consideration.

**“Ratify” or “Ratification”** means consent of a Member or Manager which may be established by: (a) the Member or Manager’s affirmative vote, (b) the Member or Manager’s

consent in writing signed by the Member, or (c) any other means reasonably evidencing consent,

**“Securities Act”** means the Securities Act of 1933, as amended.

**“Service Professional”** means an employee, contractor, lawyer, accountant, consultant, the firm of any of the foregoing, and any other Person engaged to provide services relating to an offering of securities of the Company.

**“Simple Majority”** means one (1) or more Members having among them more than 50% of the Membership Interests.

**“Substituted Member”** means a Member who assumes a Membership Interest from a previous Member.

**“Super Majority”** means one (1) or more Members having among them at least 66.67% of the Membership Interests.

**“TBOC”** means the Texas Business Organizations Code, including any successor statute, as amended from time to time.

**“Token”** means a smart contract on the Avalanche Blockchain, or such other blockchain platform as determined by Mogul created for the purpose of representing and recording Membership Interests in the Company.

**“Third Party”** means a Person who is not a Member.

**“Transfer”** means any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other form of transfer of a Membership Interest or any portion of a Membership Interest, whether voluntary or involuntary, whether attempted or completed, and whether during the transferor’s lifetime or upon or after the transferor’s death, including by operation of law, court order, judicial process, foreclosure, levy or attachment.

**“Treasury Regulations”** means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

**“Transfer Process”** means such terms and conditions as set forth in Section 13.03.

**“User Services Agreement”** means that certain User Services Agreement by and between Mogul and each Member.

**“Unit(s)” or “Membership Unit(s)”** means a unit of ownership in the Company.

Other terms defined herein have the meaning so given them.

## **ARTICLE II ORGANIZATION**

2.01 **Formation.** The Company has been organized as a Texas limited liability company by filing a Certificate of Formation with the Secretary of State of Texas, which may be amended or restated from time to time.

2.02 **Name.** The name of the Company is “MOGUL 13906 TALLHEATH LLC” and all Company business must be conducted in that name or such other names that comply with applicable law. The Board may change the name from time to time without approval of the Members, provided that the Board must notify the Members of such name change within a reasonable time thereafter. The Board shall cause any assumed or fictitious name certificates to be filed for the Company as required by law.

2.03 **Registered Office and Registered Agent.** The registered office of the Company required by the TBOC to be maintained in the State of Texas shall be the office of the initial registered agent named in the Certificate of Formation 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 law. The registered agent of the Company in the State of Texas shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Board may designate from time to time in the manner provided by law.

2.04 **Principal Office and Other Offices.** The principal office of the Company in the United States where the books and records shall be kept shall be at such place as the Board may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Board may designate from time to time. The initial office of the Company is as outlined in the company formation document.

2.05 **Purposes.** The purpose of the Company shall be any lawful purpose which may be undertaken by the Company in accordance with the applicable provisions of the TBOC. Unless otherwise determined by vote of the Members pursuant to this Agreement, the primary purpose of the Company shall be to operate as an Investment Club for purposes of investing in and managing real estate assets.

2.06 **Powers.** The Company shall have all powers necessary, suitable or convenient for the accomplishment of the purposes of the Company, including without limitation (a) to make and perform all contracts; (b) to borrow or lend money and secure payment thereof; (c) to engage in all activities and transactions; and (d) to have all powers available to a limited liability company under (i) the TBOC, (ii) any other laws in the State of Texas, and (iii) the laws of any other jurisdiction where the Company conducts business.

2.07 **Foreign Qualification.** Prior to the Company's conducting business in any jurisdiction other than Texas, the Board shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Board, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Board, each Member shall immediately execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.08 **Term.** The Company will commence as provided in the Certificate of Formation for the Company filed with the Secretary of the State of Texas, and will continue until the Company terminates under the terms of this Agreement.

2.09 **Company Property.** All Company property shall be owned in the name of the Company and not in the name of any Member. No Member or Assignee will have any interest in such Company property solely by reason of the Member's status as a Member. The Board shall deposit or invest all funds of the Company in an account or accounts in the name of the Company. No funds other

than the funds of the Company may be deposited therein. The funds in such accounts shall be used exclusively for the business of the Company (including distributions to Members) and may be withdrawn only by the persons approved by the Board.

2.10 **Mergers and Exchanges.** The Company may be a party to a merger, an exchange, or acquisition under the TBOC, subject to the requirements of this Agreement.

2.11 **No State-Law Partnership.** The Members intend that the Company not be a partnership, a limited partnership, or a joint venture, and that no Member or Manager be a partner or joint venturer of any other Member or Manager, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

2.12 **Statutory Requirements.** The Managers may file a Certificate of Amendment to the original Certificate of Formation and any other restated certificates of formation containing an amendment as may be authorized by a vote of the Simple Majority, except any Certificates of Dissolution, which shall require the vote of a Super Majority.

### **ARTICLE III MEMBERSHIP**

3.01 **Initial Members and Membership Interests.** The Members of the Company are listed on Exhibit A attached hereto. Each Person executing this Agreement as an initial Member consent to the admission of all other Persons executing this Agreement as initial Members. Set forth opposite the name of each Member listed on Exhibit A is such Member's Capital Contribution, the number of Units issued to such Member, and its Membership Interest, expressed as both a percentage and as Tokens. Exhibit A may be amended from time to time to reflect changes in or additions to the membership of the Company in accordance with the terms of this Agreement. Any such amended Exhibit A shall (a) supersede all prior versions of Exhibit A, (b) become part of this Agreement, and (c) be kept on file at the principal office of the Company or the Avalanche Blockchain. Each Member represents that the Member is acquiring an interest in the Company for the account of such Member and for the purposes of participating in the Investment Club, and not with a view to distribution thereof within the meaning of the Securities Act or any state securities laws. The Member will not transfer such interest in contravention of the Securities Act or any applicable state or federal securities laws or the terms of this Agreement. The information contained in Exhibit A, as it may be amended, relating to Membership Interests may be recorded, kept and revised on Avalanche Blockchain via Tokens and such blockchain record shall be of the same force and effect as Exhibit A attached hereto.

#### 3.02 **Additional Members.**

(a) **New Issuances.** From time to time the Company may Ratify, by a Simple Majority, a New Issuance. If such New Issuance has been previously approved by the Company in accordance with this paragraph 3.02(a), then the Board may thereafter admit the Additional Members pursuant to the terms of that New Issuance.

(b) **Other Additional Members.** Notwithstanding paragraph 3.02(a), additional Persons not in connection with a New Issuance may be admitted to the Company as Additional Members on such terms and conditions as shall be determined by a Simple Majority.

(c) **Additional Members Generally.** The terms of admission of any Additional

Member(s) or New Issuance(s) must specify the Membership Interests and Capital Contributions applicable thereto, and which will be reflected on an amended Exhibit A. The Board shall reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Board.

**3.03 Member Rights Specified in Agreement.** Except as otherwise specifically provided in this Agreement, no Member shall have the right (a) to Transfer its interest in the Company; (b) to require partition of the property of the Company; (c) to compel the sale of Company assets; or (d) to cause the winding up of the Company.

**3.04 Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that:

(a) Authority. (a) If that Member is a business entity, that Member is duly organized, validly existing, and in good standing under the law of the state of its organization; (b) if that Member is a business entity, that Member is duly qualified to do business in the jurisdiction of its principal place of business; (c) that Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder; (d) if that Member is a business entity, all necessary actions by the board of directors, shareholders, members, managers or other representative of that Member necessary for the due authorization, execution, delivery, and performance of this Agreement have been duly taken; (e) that Member's authorization, execution, delivery, and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

(b) Investment Club. (a) The Member is investing in the Company with the intent and purpose of joining and participating in the Company as an Investment Club; (b) the intent and purpose of the Investment Club is the ownership and management of the Real Property; (c) the Member shall actively participate in the decision-making and management of the Company, including but not limited to participating in Company votes related to decision-making and operations of the Company in compliance with any time periods for voting as determined by the Company; and (d) in the event the issuance, sale or Transfer of any Membership Interest is deemed to be a security under the Securities Act of 1933 by a governmental agency having such authority, the Member shall cooperate with the Company to as necessary to resolve such issue or comply with applicable securities laws.

**3.05 No Authority.** Except as otherwise specifically provided in this Agreement, no Member has the authority or power to (a) transact business in the name of or on behalf of the Company, (b) bind or obligate the Company, or (c) incur any expenditures on behalf of the Company.

**3.06 Liability to Third Parties.** No Member or Manager shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

**3.07 Withdrawal.** A Member may withdraw from the Company at any time, subject to winding up or termination as provided in Article XVI of this Agreement. Such withdrawal shall be complete and the withdrawing Member shall no longer be a Member of the Company upon the Transfer of all of the withdrawing Member's Membership Interest pursuant to Section 13.02.

**3.08 Information.**

(a) **Member Rights.** In addition to the other rights specifically set forth in this Company Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to the TBOC under the circumstances and subject to the conditions therein stated. The Members (on behalf of themselves and their Assignees) agree, however, that the Board may determine, due to contractual obligations, business concerns or other considerations, that certain information regarding the business, affairs, properties and financial condition of the Company should be kept confidential and not provided to some or all other Members or Assignees, and that it is not just or reasonable for those Members or Assignees (or representatives thereof) to examine or copy that information. An Assignee shall not have any rights to require information or account of transactions of the Company or to make inspection of the books and records of the Company, except to the extent such rights are also conferred on Assignees pursuant to the TBOC.

(b) **Costs of Inspection.** Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

**3.09 Similar or Competitive Activities; Business Opportunities.** Nothing contained in this Agreement shall prevent any Member or Manager, or any of their Affiliates from engaging in any other activities or businesses, regardless of whether those activities or businesses are similar to or competitive with the Company. None of the Members or Manager, nor any of their Affiliates shall be obligated to account to the Company or to the other Members for any profits or income earned or derived from such other activities or businesses. None of the Members or Manager, nor any of their Affiliates shall be obligated to inform the Company or the other Member of a business opportunity of any type or description.

#### **ARTICLE IV CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS**

**4.01 Initial Contributions.** Contemporaneously with the execution of this Agreement, each Member shall make the initial Capital Contribution described for that Member in Exhibit A. Any Additional Members shall make the Capital Contribution described for that Member in an amended Exhibit A, as described in Section 3.02.

**4.02 No Further Contributions.** No Member shall be required to make any Capital Contributions other than those specifically described by this Agreement, unless agreed to in writing by the contributing Member or required by the TBOC.

**4.03 Return of Contributions.** No Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member.

**4.04 Additional Capital Contributions.** The Manager may require additional Capital Contributions upon Simple Majority consent on such terms and conditions as shall be determined by a Simple Majority of the Members. In the event a Member does not timely make their full additional Capital Contribution as required in this Section 4.04, such Member shall be deemed to have consented to dilution of their Membership Interest pursuant to the contribution of additional capital by the other Members or pursuant to the sale of additional Membership Interest as the case may be.

**4.05 Capital Accounts.** Capital Accounts shall mean the account which shall be maintained

by the Company for each Member in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), including, without limitation, Section 1.704-1(b)(2)(iv)(g) and, to the extent not inconsistent therewith, the following provisions:

(a) a Member's Capital Account shall be credited with the cash or Net Value of the Member's Capital Contributions, the Member's distributive share of profit and any item of income or gain specially allocated to the Member pursuant to the provisions of Article V; and

(b) a Member's Capital Account shall be debited with the amount of cash and the Net Value of any Company property distributed to the Member, the Member's distributive share of loss and any item of expenses or losses specially allocated to the Member pursuant to the provisions of Article V.

If any Membership Interest is Transferred pursuant to the terms of this Agreement, the Assignee shall succeed to the Capital Account of the Assignor Member to the extent the Capital Account is attributable to the transferred Membership Interest; provided, however, that if the Transfer causes a termination of the Company under Internal Revenue Code Section 708(b)(1)(B), the Capital Accounts of the Members shall be adjusted in conformance with Treasury Regulation Section 1.704-1(b)(2)(iv)(l). A Member that has more than one (1) Membership Interest shall have a single Capital Account that reflects all of that Member's Membership Interests, regardless of the class of Membership Interest owned by that Member and regardless of the time or manner in which it was acquired. Whenever it is necessary to determine the Capital Account of a Member, the Capital Account of the Member shall be determined after giving effect to all allocations for transactions that were completed prior to the date as of which the determination is made.

**4.06 Modifications to Capital Accounts.** The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Board determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Board may authorize such modifications without the consent of any Member.

## **ARTICLE V ALLOCATIONS AND DISTRIBUTIONS**

### **5.01 Distributions of Cash Flow from Operations.**

(a) The Company shall make Rent Distributions on a monthly basis via each Members' Tokens. In the event the Lease Agreement provides for payment of rent on a monthly basis or any frequency other than monthly payments, the Company shall draw the Rent Distributions from the rent payments held in the Company's accounts.

(b) If at any time the amount of funds in the Property Reserve Account is below the Property Reserve Account Minimum, the Company may withhold a percentage, to be determined by the Manager in its reasonable discretion, of any Rent Distributions until the Property Reserve Account Minimum is reached, for purposes of maintaining adequate reserves for the operation of the Company and maintenance of the Real Property.

(c) In the event the amount of funds in the Property Reserve Account is in excess of the Property Reserve Account Minimum, the Members may cause, upon Simple Majority

consent, the Company to distribute to the Members, in accordance with their Membership Interests, an amount in cash equal to that excess via each Members' Tokens.

(d) For the purpose of determining the Members entitled to receive a distribution as provided for in this Agreement, such determination shall be made immediately before the execution of the distribution using Avalanche Blockchain and the Member's Tokens.

#### **5.02 Limitations on Distributions.**

(a) The Company may not make a distribution to a Member or Assignee if, immediately after giving effect to the distribution, the Company would be insolvent, determined in accordance with Section 101.206 of the TBOC. A Member or Assignee who receives a distribution in violation of Section 101.206 of the TBOC is not required to return the distribution except as required in Section 101.206 of the TBOC.

(b) The Members shall look solely to the assets of the Company for any distributions, including liquidating distributions. If the assets of the Company remaining after the payment or discharge, or the provision for payment or discharge, of the Company liabilities are insufficient to make any distributions, no Member has any recourse against the separate assets of any other Member.

**5.03 Allocation of Net Income and Loss from Operations.** Net income and loss from Operations for each Fiscal Year shall be determined for financial accounting purposes in accordance with the method of accounting used for federal income tax purposes and the books and records of the Company. Except as provided in Section 5.05, income, gain, loss and deduction from Operations shall be allocated among the Members in each taxable year (or portion thereof) as set forth below:

(a) Net income and gain shall be allocated to the Members pro rata in accordance with their Membership Interests.

(b) Net loss and deductions shall be allocated to the Members pro rata in accordance with their Membership Interests.

**5.04 Allocation of Income, Gain, Loss and Deduction Upon a Liquidation Event.** Items of income, gain, loss or deduction recognized by the Company in accordance with the method of accounting and the books and records of the Company upon the occurrence of a Liquidation Event, shall be allocated to and among the Members, prior to taking into account distributions of Cash Flow for the subject tax year, as set forth below:

(a) Net income and gain shall be allocated to the Members pro rata in accordance with their Membership Interests.

(b) Net loss and deductions shall be allocated to the Members pro rata in accordance with their Membership Interests.

#### **5.05 Limitations on Allocations.**

(a) Minimum Gain Chargeback. Notwithstanding any provision of this Article V, if there is a net decrease in Company Minimum Gain during any Fiscal Year or other period, prior to any other allocation pursuant hereto, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount and manner required by Treasury Regulation Section 1.704 2. Notwithstanding any provision



of this Article V, if there is a net decrease in partner nonrecourse debt minimum gain, any Member with a share of that partner nonrecourse debt minimum gain as of the beginning of such year shall be allocated items of income and gain for the year (and, if necessary, for succeeding years) equal to that Member's share of the net decrease in the partner nonrecourse debt minimum gain, as provided in Treasury Regulation Section 1.704 2(i)(4).

(b) Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704 1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases a negative balance in its Capital Account beyond the sum of the amount of such Member's obligation to restore its deficit Capital Account plus its share of minimum gain shall be allocated items of income and gain sufficient to eliminate such increase or negative balance caused thereby, as quickly as possible, to the extent required by such Treasury Regulation.

(c) Gross Income Allocation. If any Member has a deficit Capital Account at the end of any Company Fiscal Year that is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member is deemed to be obligated to restore pursuant to Treasury Regulation Section 1.704 2, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this paragraph 5.05(c) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article V have been made as if this paragraph 5.05(c) were not in this Agreement.

(d) Section 704(b) Limitation. Notwithstanding any other provision of this Agreement to the contrary, no allocation of any item of income or loss shall be made to a Member if such allocation would not have "economic effect" pursuant to Treasury Regulation Section 1.704 1(b)(2)(ii) or otherwise be in accordance with its interest in the Company within the meaning of Treasury Regulation Sections 1.704 1(b)(3) and 1.704 2. To the extent an allocation cannot be made to a Member due to the application of this paragraph 5.05(d), such allocation shall be made to the other Member(s) entitled or required to receive such allocation hereunder.

(e) Curative Allocations. Any allocations of items of income, gain, or loss pursuant to paragraphs 5.05(a)-(d) shall be taken into account in computing subsequent allocations pursuant to this Article V, so that the net amount of any items so allocated and the income, losses and other items allocated to each Member pursuant to this Article V shall, to the extent possible, be equal to the net amount that would have been allocated to each Member had no allocations ever been made pursuant to paragraphs 5.05(a) through 5.05(d).

#### **5.06 Distributions Following a Liquidation Event.**

(a) Upon liquidation of the Company following a Liquidation Event, the assets of the Company shall be distributed no later than the later of 90 days after the date of such liquidation or the end of the Company's taxable year in which the liquidation occurs and shall be applied in the following order of priority:

- (i) to the payment of debts and liabilities of the Company;
- (ii) unless inconsistent with Treasury Regulation Section 1.704 1(b)(2)(ii)(b), or any successor provision, to set up any reserves that the Board

deems reasonably necessary for contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the business of the Company; and

(iii) after all Capital Account adjustments for the Company's taxable year in which the liquidation occurs (including without limitation adjustments required under Treasury Regulation Section 1.704-1(b)(2)(iv)(e), relating to distributions in kind), to the Members in accordance with each Member's positive Capital Account balance, which should and is intended to result in the Members receiving distributions in the same or substantially similar order and priority as they would have received had the distributions been made in accordance with Section 5.01.

(b) The Members intend that the allocation provisions of this Article V produce final Capital Account balances of the Members that will result in liquidating distributions provided for in Section 5.06 to be the same as if the distributions were made pursuant to Section 5.01. If and to the extent that the allocation provisions of this Article V in the year of the Company's dissolution would fail to produce such final Capital Account balances, then, following the allocation of income and gain from the year in which dissolution occurs (i) such provisions shall be amended by the Board if and to the extent necessary to produce such result, and (ii) items of income, gain, loss and deduction for all prior open years that can be amended (i.e., those years for which the Company and its Members can still file an amended federal income tax return) shall be reallocated among the Members as reasonably determined by the Board to produce such result.

(c) If a transfer of any Membership Interest results in a termination of the Company for federal income tax purposes under Section 708(b)(1)(B) of the Internal Revenue Code, paragraph 5.06(a) shall not apply and a Member's portion of the constructive liquidating distribution of the Company's assets that is deemed to occur under Treasury Regulation Section 1.708-1(b)(1)(iv) (or any similar or successor provision) shall be determined in accordance with the Capital Accounts of the Members as determined after taking into account all Capital Account adjustments for the Company's taxable year ending on the date of such termination.

**5.07 Liquidation of Member's Membership Interest.** Except as may otherwise be required in this Agreement, if a Member's Membership Interest is to be liquidated other than in accordance with a Liquidation Event, liquidating distributions shall be made in accordance with the positive Capital Account balance of such Member, as determined after taking into account all Capital Account adjustments for the Company's taxable year during which such liquidation occurs, by the end of the taxable year, or if later, within 90 days after the date of such liquidation. Where a Member's Membership Interest is to be liquidated by a series of distributions, such Member's Membership Interest shall not be considered liquidated until the final distribution has been made.

For purposes of this Section 5.07, a liquidation of a Member's Membership Interest means the termination of the Member's entire Membership Interest by means of a distribution or series of distributions to the Member by the Company other than in conjunction with a Liquidation Event.

#### **5.08 Additional Tax Allocation Provisions.**

(a) For income tax purposes, allocations of income and loss (and items thereof) shall be made in accordance with the foregoing allocations of income, gain and loss for financial purposes.

(b) Notwithstanding anything to the contrary contained herein, items of income, gain, loss and deduction with respect to property, other than cash, contributed to the Company by a Member or with respect to an adjustment to the Members' Capital Accounts to reflect a revaluation of the Company property, shall be allocated among the Members so as to take into account the variation between the basis of the property to the Company and its Fair Market Value at the time of contribution or, in the case of a revaluation of the Company property, the variation between the basis of the Company property to the Company and its Fair Market Value as of the date of revaluation, as provided in Section 704(c) of the Internal Revenue Code and Regulations thereunder and Treasury Regulations Section 1.704-1(b)(2)(iv)(g).

(c) As between a Member who has Transferred all or part of its Membership Interest and its Assignee, all items of income, gain, loss and deduction, for any year shall be apportioned on the basis of the number of days in each such year that each was the holder of such Membership Interest (making any adjustments necessary to comply with the provisions of Section 706(d)(2) of the Internal Revenue Code), without regard to the results of the Company's Operations during the period before and after the date of such Transfer, provided that if both the Assignor Member and Assignee consent thereto a special closing of the books shall be had as of the effective date of such Transfer and the apportionment of items of income and gain, and deduction and loss, shall be made on the basis of actual operating results.

**5.09 Foreign Withholding.** If required under the Internal Revenue Code or otherwise by the IRS, the Manager is authorized to withhold cash and property distributable to a Member, and to pay over such amount to the IRS to satisfy any withholding requirements imposed upon such Member, or the Company with respect to such Member. If, at the time such amount should be paid over to the IRS, the Company does not have Cash Flow otherwise distributable to such Member from which it can withhold and pay to the IRS the required amounts, then the subject Member shall contribute, and shall be personally obligated to contribute, all amounts necessary for the Company to satisfy its obligations to the IRS.

**5.10 Tax Distributions.** Notwithstanding the foregoing, to the extent the Company has sufficient Cash Flow, the Board may cause the Company to distribute to the Members an amount of cash sufficient to permit the Members to satisfy their federal income tax obligations with respect to income allocated to the Members during a taxable period. The amount of a distribution pursuant to this Section 5.10 to a Member for a taxable period shall equal (i) the amount of income allocated to such Member by the Company during such taxable period, reduced by any losses previously allocated to such Member by the Company, multiplied by (ii) the highest marginal federal income tax rate applicable to individuals during such taxable period (taking into account the character of the income so allocated). Any such distribution shall be made pro rata to the Members in proportion to the amount of taxable income allocated to the Members during such taxable period. Distributions pursuant to this Section 5.10 shall be treated as an advance of distributions pursuant to Section 5.01, and future distributions to a Member pursuant to Section 5.01 shall be offset by prior distributions to such Member under this Section 5.10.

**5.11 Recovery of Erroneous Distributions.** If the Company has, pursuant to any clear and manifest accounting or similar error, distributed to any Member an amount in excess of the amount to which the Member is entitled pursuant to this Agreement, the Member shall reimburse the Company to the extent of such excess, without interest, within 30 days after demand by the Company.

## **ARTICLE VI MANAGEMENT**

6.01 **Initial Managers.** The initial Managers shall be Mogul. The Managers shall comprise the Board of Managers (or Board). Managers shall be elected, added, removed, or replaced in accordance with this Article VI. Any Manager removed as a Member shall be deemed to have been removed as a Manager as of the date of removal.

6.02 **Authority of the Board.** Except for situations in which the Ratification by the Members is required by this Agreement or by non-waivable provisions of applicable law, and subject to the provisions of Section 6.04, the Board shall have the sole and exclusive control of the management, business and affairs of the Company, and the Board shall make all decisions by majority and take all actions for the Company not otherwise provided for in this Agreement, including, without limitation, the following:

- (a) entering into, making, and performing contracts, agreements, and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
- (b) hiring employees and agents, establishing the terms thereunder, and delegating authority to such employees and agents as the Board deems appropriate;
- (c) establishing officers and appointing officers in accordance with Article IX.
- (d) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (e) maintaining the assets of the Company in good order;
- (f) selling and issuing Membership Interests, and admitting Additional Members in accordance with Section 3.02;
- (g) to the extent that funds of the Company are available therefor, paying debts and obligations of the Company;
- (h) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;
- (i) borrowing money or otherwise committing the credit of the Company for Company activities and voluntary prepayments or extensions of debt;
- (j) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (k) obtaining insurance for the Company;
- (l) determining distributions of Company cash and other property as provided in Section 5.01;
- (m) establishing a seal for the Company; and

(n) designating one (1) or more committees, each of which shall be comprised of one (1) or more Managers, to exercise any authority of the Board in the management, business, and affairs of the Company.

Furthermore, no special relationship shall exist between any Manager and the Members, and no Member or Manager shall have any duty to any Member, whether fiduciary or otherwise, except as expressly set forth herein (or in other written agreements). No Member, Manager, or Officer shall be liable to the Company or to any other Member for any loss or damage sustained by the Company or to any Member, unless the loss or damage shall have been the result of gross negligence, fraud or intentional misconduct by the Member, Manager, or Officer in question.

**6.03 Real Property Management.** The Company shall enter into a property management or other similar agreement for the daily management, maintenance, repair and operation of the Real Property with a property management company. Such property management agreement shall provide standard decision-making authority to the property management company for the daily management, maintenance, repair and operation of the Real Property. The Members hereby agree that such decision-making authority agreed to in the property management agreement shall be delegated solely to the property management company, unless otherwise determined by a Simple Majority.

**6.04 Restrictions.** Notwithstanding the provisions of Section 6.02, the Board shall not do any act in violation of this Agreement or cause the Company to do any of the following without complying with the applicable requirements set forth below:

(a) enter into a Liquidation Event or convert the Company's type of entity without complying with the applicable procedures set forth in paragraph 8.01(b) (unless such provision is rendered inapplicable by another provision of applicable law);

(b) approve a New Issuance of Membership Interests except in accordance with Article III;

(c) do any act which requires the prior Ratification of any Member or group of Members;

(d) cause the Company to (i) not be taxable as a partnership for federal income tax purposes, or (ii) take a position inconsistent with such treatment without approval by Simple Majority consent of the Members;

(e) possess Company property or assign rights in Company property, other than for a Company purpose without Ratification by a Simple Majority;

(f) amend this Agreement, except as expressly permitted by this Agreement;

(g) cause the Company to acquire any Membership Interest without Ratification by a Simple Majority;

(h) cause the Company to acquire from any person any equity or debt securities or assets of any corporation, limited liability company, partnership, association, business, or business division, whether by stock purchase, asset purchase, contribution, or other business combination (excluding investments and asset acquisitions in the ordinary course of the Company's business) without Ratification by a Simple Majority;

(i) cause the Company to participate in any merger, consolidation, transfer, continuance, or conversion of the Company with or into any other person without Ratification by a Simple Majority; or

(j) cause the Company to participate in any reorganization in which Membership Interests are exchanged for or converted into cash, securities of any other person, or other property without Ratification by a Simple Majority.

**6.05 Election, Number and Term of Office.** The number of Managers on the Board of Managers shall be determined from time to time by resolution of the Board, and shall initially consist of one; provided, however, that no decrease in the number of Managers that would have the effect of shortening the term of an incumbent Manager may be made by the Board of Managers. Unless otherwise provided in the Certificate of Formation, Managers need not be Members or residents of the State of Texas.

(a) Appointment of Managers. Until its resignation or removal, Mogul shall be a Manager.

(b) Term. Each Manager shall hold office for the term for which he is elected and thereafter until his successor shall have been elected and qualified, or until his earlier death, resignation or removal.

**6.06 Vacancies; Removal; Resignation.** Any Manager position to be filled by reason of an increase in the number of Managers or other reason may be filled by election at an annual or special meeting of Members called for that purpose. A Manager elected to fill a vacancy occurring other than by reason of an increase in the number of Managers shall be elected for the unexpired term of his predecessor in office. At any meeting of Members at which a quorum of Members is present called expressly for that purpose, or pursuant to a written consent adopted pursuant to this Agreement, any Manager may be removed, with cause, by the Ratification by a Simple Majority or in accordance with Section 15.01. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the remaining Managers. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

**6.07 Compensation.** For their services in the management of the Company and its operations, the Managers may receive such compensation, if any, as may be designated from time to time by Simple Majority vote of the Members. In the event the Managers are entitled to compensation pursuant to the User Services Agreement, such compensation shall not be deemed to be a management fee under this Section 6.07.

**6.08 Reimbursement.** Managers are not required to advance any funds to pay costs and expenses of the Company. However, in the event Managers advance such funds, the Managers shall be entitled to be reimbursed for out-of-pocket costs and expenses incurred in the course of their service hereunder.

**6.09 Meetings of the Board.**

(a) Generally.

(i) There shall be no required meetings of the Board.

(ii) In connection with any annual meeting of Members at which Managers are elected, the Board so elected may, if a quorum is present, hold their first meeting for the transaction of business immediately after and at the same place as such annual meeting of the Members. Notice of such meeting at such time and place shall not be required.

(iii) Special meetings of the Board may be called by any Manager on at least 24 hours' notice to each other Manager. Such notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for by the Certificate of Formation or this Agreement. Notice of special meetings may be given by facsimile or e-mail.

(b) Quorum. Unless otherwise required by law or provided in the Certificate of Formation or this Agreement, a majority of the total number of Managers fixed by, or in the manner provided in, the Certificate of Formation or this Agreement shall constitute a quorum for the transaction of business of the Board, and the act of a majority of the Board present at a meeting at which a quorum is present shall be the act of the Board. A Manager who is present at a meeting of the Board at which action on any Company matter is taken shall be presumed to have assented to the action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the individual acting as secretary of the meeting before the adjournment thereof or shall deliver such dissent to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

(c) Place of Meetings. Meetings of the Board may be held at such place or places as shall be determined from time to time by resolution of the Board, including virtual or ebased meetings. At all meetings of the Board, business shall be transacted in such order as shall from time to time be determined by resolution of the Board. Attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**6.10 Ratification of Acts or Contracts by Members.** The Board in its discretion may submit any act or contract for Ratification at any annual meeting of the Members, or at any special meeting of the Members called for the purpose of considering any such act or contract. Any act or contract that shall be approved by the Board in accordance with this Agreement shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or Ratified by every Member.

**6.11 Action Without Meeting.** Any action permitted or required by the TBOC, the Certificate of Formation or this Agreement to be taken at a meeting of the Board or any committee designated by the Board may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by all the Board or members of such committee, as the case may be. Every written consent shall bear the date of signature of each Manager who signs the consent, and the consent may be in one (1) or more counterparts. Electronic mail or similar transmission by a Manager, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Manager, shall be regarded as signed by the Manager for purposes of this Section 6.11. In the event of electronic mail, the date of consent shall be the date such correspondence was sent by the Manager or members of such committee, provided that the electronic mail was sent to the electronic mail address most recently provided by the receiving Managers or members of the committee. Such

consent shall have the same force and effect as a unanimous vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of Texas, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Board or any such committee, as the case may be. The signed consent (which electronic mail shall satisfy this requirement) or a signed copy of the consent shall be kept on file at the principal office of the Company.

**6.12 Action by Telephone or Video Conference.** Subject to the requirements of the TBOC, the Certificate of Formation or this Agreement for notice of meetings, unless otherwise restricted by the Certificate of Formation, Managers, or members of any committee designated by the Board, may participate in and hold a meeting of the Board or any committee of Managers, as the case may be, by means of conference telephone or similar communications equipment by which all Persons participating in the meeting can hear each other. Or, another suitable electronic communications system may be used including virtual, ebased, video-conferencing technology or the Internet, but only if each Manager entitled to participate in the meeting consents to the meeting being held by means of that system and the system provides access to the meeting in a manner or using a method by which each Manager participating in the meeting can communicate concurrently with each other participant. Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**6.13 Broad Discretion and Authority of the Board.** Each Member acknowledges and understands that the Board is granted broad discretion and authority under this Agreement, and that the Board's exercise of such broad discretion and authority may impair the value of the Membership Interest of the Member. Such Member further acknowledges and understands that the Board would not cause the Company to issue a Membership Interest to the Member if the Board did not have such broad discretion and authority, and such Member agrees not to challenge the Manager's exercise of such discretion and authority.

## **ARTICLE VII CONFIDENTIAL INFORMATION**

**7.01 Confidentiality.** The Members agree that the Board from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information, subject to the TBOC. The Members acknowledge that they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member and Assignee shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, Manager, or Officer except for disclosures (i) compelled by law (but the Member or Assignee must notify the Board (unless such notice is prohibited by applicable law) promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or Assignee, but only if the recipients have agreed to be bound by the provisions of this Section 7.01 or a similar obligation of confidentiality or (iii) of information that Member or Assignee also has received from a source independent of the Company that the Member or Assignee reasonably believes obtained that



information without breach of any obligation of confidentiality. This Article VII shall not apply to any information that (a) was or becomes generally available to the public other than as a result of a breach of this Section 7.01 by the Member or Assignee asserting this exception, (b) was or is independently developed by or for such Member or Assignee without any reliance on such confidential or proprietary information of the Company, or (c) the Company has expressly approved in writing such Member's or Assignee's disclosure of such information.

**7.02 Specific Performance.** The Members (on behalf of themselves and their Assignees) acknowledge that any breach of the provisions of Section 7.01 may cause irreparable injury to the Company for which monetary damages (or other remedy at law) may be inadequate, difficult to compute, or both given (y) the complexities and uncertainties in measuring the actual damages that may be sustained by reason of the failure of a Member or Assignee to comply with such provisions, and (z) the uniqueness of the Company business and the confidential nature of the information. Accordingly, the Members agree that the provisions of Section 7.01 may be enforced by specific performance.

## **ARTICLE VIII MEETINGS OF MEMBERS**

### **8.01 Meetings.**

(a) Meetings of the Members may be called at any time by the Board, or by one or more Members holding at least 25% of the Membership Interests of the Company. Meetings shall be held at the Company's principal place of business, or any other reasonable location, including via virtual, ebased or conference call, as set forth in the meeting notice. With respect to any matter to be determined by the Members, other than a matter for which the affirmative vote of the holders of a specified portion of the Membership Interests of all Members entitled to vote is required by the TBOC or this Agreement, the Ratification by a Simple Majority present at a meeting of Members at which a quorum is present shall be the act of the Members, except as provided by paragraph 8.01(b) or by another specific provision in this Agreement that requires a different vote of the Members.

(b) The Ratification by a Super Majority shall be required for the Company to (i) enter into a Liquidation Event, or (ii) change the Company's type of entity.

(c) The Members hereby agree that no annual meeting of the Members shall be required.

### **8.02 Action by Written Consent Without Meeting.**

(a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, by the written consent of the Members or committee members, as the case may be, having not fewer than the minimum percentage of votes that would be necessary to take the action at a meeting at which all Members or committee members entitled to vote on the action were present and voted. No written consent shall be effective to take the action that is the subject to the consent unless, within 60 days after the date of the earliest dated consent delivered to the Company in the manner required by this paragraph 8.02(a), the signed consent or consents are delivered to the Company by delivery to its registered office, its principal place of business, or the Board. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Company's principal place of business shall be addressed to the

Board. Every written consent shall bear the date of signature of each Member who signs the consent, and the consent may be in one (1) or more counterparts. Electronic mail or similar transmission by a Member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this paragraph 8.02(a). In the event of electronic mail, the date of consent shall be the date such correspondence was sent by the Member, provided that the electronic mail was sent to the electronic mail address most recently provided by the receiving Managers or members of the committee. The signed consent or a signed copy of the consent shall be kept on file at the principal office of the Company. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

(b) If any action by Members is taken by written consent, any articles or documents filed with the Secretary of State of Texas as a result of the taking of the action shall state, in lieu of any statement required by the TBOC concerning any vote of Members, that written consent has been given in accordance with the provisions of the TBOC and that any written notice required by the TBOC has been given.

**8.03 Action by Telephone or Video Conference.** Members may participate in and hold a meeting by means of conference telephone, virtual, ebased or similar communications equipment by which all Persons participating in the meeting can hear each other. Or, another suitable electronic communications system may be used including video-conferencing technology or the Internet, Participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE IX . OFFICERS**

**9.01 Qualification.** The Board may, from time to time, designate one (1) or more individuals to be Officers. No Officer need be a resident of the State of Texas, a Member or a Manager. Any Officers so designated shall have such authority and perform such duties as the Board may, from time to time, delegate to them. The Board may assign titles to particular Officers. Unless the Board decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such Officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such Officer by the Board pursuant to this Section 9.01. Each Officer shall hold office until his successor shall be duly designated and qualify for such office, until his death, or until he shall resign or shall have been removed in the manner hereinafter provided. Any vacancy occurring in any office of the Company (other than Manager) may be filled by the Board. Any number of offices may be held by an individual.

**9.02 Compensation.** The salaries or other compensation, if any, of the Officers of the Company shall be fixed from time to time by the Board. However, election or appointment of an Officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.

**9.03 Resignation.** Any Officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

9.04 **Removal.** Any Officer may be removed as such, either with or without cause, by Simple Majority consent of the Members; provided, however, that such removal shall be without prejudice to any contract or other rights, if any, of the individual so removed.

9.05 **Officers.** Unless otherwise determined by the Simple Majority of the Members, there shall be no other officers of the Company except for a President and Secretary. The initial President and Secretary of the Company shall be Mogul.

## **ARTICLE X INDEMNIFICATION**

10.01 **Right to Indemnification.** Subject to the limitations and conditions as provided in this Article X, each Person who was or is made a party or is threatened to be made a party to or is involved in any Proceeding, or any appeal in such a Proceeding, or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that such Person, or a Person of whom such Person is the legal representative, is or was a Member, Manager, or Officer or while a Member, Manager, or Officer is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Company to the fullest extent permitted by the TBOC, as the same exist or may hereafter 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 law 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, without limitation, attorney's fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article X shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article X shall be deemed contract rights, and no amendments, modification or repeal of this Article X shall have the effect of limiting or denying any such rights with respect to actions taken or Proceeding arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article X could involve indemnification for negligence or under theories of strict liability.

10.02 **Advance Payment.** The right to indemnification conferred in this Article X shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Person of the type entitled to be indemnified under Section 10.01 who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such Person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such Person of its good faith belief that it has met the standard of conduct necessary for indemnification under this Article X and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article X or otherwise.

10.03 **Indemnification of Officers, Employees and Agents.** The Company, by adoption of a resolution of the Board, may indemnify and advance or reimburse expenses to an Officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Managers under this Article X; and, the Company may indemnify

and advance or reimburse expenses to Persons who are not or were not Managers, Officers, employees, or agents of the Company but who are or were serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person to the same extent that it may indemnify and advance expenses to Managers under this Article X.

**10.04 Appearance as a Witness.** Notwithstanding any other provision of this Article X, the Company may pay or reimburse expenses incurred by a Member or Manager in connection with his appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

**10.05 Non-exclusivity of Rights.** The right to indemnification and the advancement and payment of expenses conferred in this Article X shall not be exclusive of any other right which a Member or Manager or other Person indemnified pursuant to Section 10.03 may have or hereafter acquire under any law (common or statutory), provision of the Certificate of Formation or this Agreement, vote of disinterested Managers or otherwise.

**10.06 Insurance.** The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is a Member or was serving as a Manager, Officer, employee or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article X.

**10.07 Member Notification.** To the extent required by law, any indemnification of or advance of expenses to a Member or Manager in accordance with this Article X shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

**10.08 Savings Clause.** If this Article X or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Member or Manager or any other Person indemnified pursuant to this Article X as to costs, charges, and expenses (including attorney's 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 X that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE XI TAX MATTERS**

**11.01 Tax Returns.** The Board shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in Section 11.02. Each Member shall furnish to the Board all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared

and filed.

**11.02 Tax Elections.** The Members intend that the Company be classified as a partnership for federal income tax purposes and the Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's Fiscal Year;
- (b) to adopt the cash method of accounting for keeping the Company's books and records;
- (c) if a distribution of Company property as described in Section 734 of the Internal Revenue Code occurs or if a transfer of a Membership Interest as described in Section 743 of the Internal Revenue Code occurs, on written request of any Member, to elect, pursuant to Section 754 of the Internal Revenue Code, to adjust the basis of Company properties;
- (d) to elect to amortize the organizational expenses of the Company and the startup expenditures of the Company under Section 195 of the Internal Revenue Code ratably over a period of 60 months as permitted by Section 709(b) of the Internal Revenue Code; and
- (e) any other election the Board may deem appropriate and in the best interest of the Members.

Neither the Company nor any Manager or Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 subtitle A of the Internal Revenue Code or any similar provisions of applicable state law, and no provision of this Agreement shall be construed to sanction or approve such an election.

**11.03 Partner Representative.**

(a) Appointment. The Members hereby appoint Mogul as the "partnership representative" (the "**Partnership Representative**") as provided in Internal Revenue Code Section 6223(a) (as amended by the Bipartisan Budget Act of 2015 ("**BBA**")). The Partnership Representative may resign at any time. Upon any such resignation, a Simple Majority of the Members shall appoint a new Partnership Representative.

(b) Tax Examination and Audits. The Partnership Representative is authorized and required to represent the Company (at the Company's Expense) in connection with all examinations of the Company's affairs by taxing authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees that such Member will not independently act with respect to tax audits or tax litigation of the Company, unless previously authorized to do so in writing by the Partnership Representative, which authorization may be withheld by the Partnership Representative in its sole and absolute discretion. The Partnership Representative shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority.

(c) BBA Elections. The Company will annually elect out of the partnership audit procedures enacted under Section 1101 of the BBA (the "**BBA Procedures**") pursuant to

Internal Revenue Code Section 6221(b) (as amended by the BBA). For any year in which applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Internal Revenue Code Section 6226, as amended by Section 1101 of the BBA, and furnish to the Internal Revenue Service and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment.

(d) Tax Returns and Tax Deficiencies. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and taxes imposed pursuant to Internal Revenue Code Section 6226 as amended by the BBA) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

(e) Income Tax Elections. Except as otherwise provided herein, each of the Partnership Representative shall have sole discretion to make any determination regarding income tax elections it deems advisable on behalf of the Company; provided that, the Partnership Representative will make an election under Internal Revenue Code Section 754, if requested in writing by another Member.

(f) Indemnification. The Company shall defend, indemnify, and hold harmless the Partnership Representative against any and all liabilities sustained as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Partnership Representative, so long as such act or decision was done or made in good faith and does not constitute gross negligence or willful misconduct.

#### 11.04 **Tax Returns.**

(a) Company Obligations. At the expense of the Company, the Partnership Representative shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company pursuant to the Internal Revenue Code as well as all other required tax returns in each jurisdiction in which the Company owns property or does business. As soon as reasonably possible after the end of each Fiscal year, the Partnership Representative shall cause to be delivered to each Person who was a Member at any time during such Fiscal Year, IRS Schedule K-1 to Form 1065 and such other information with respect to the Company as may be necessary for the preparation of such Person's federal, state, and local income tax returns for each Fiscal Year.

(b) Member Obligations. Each Member shall timely provide to the Company all information and documents that such Member is required to provide by applicable tax requirements, and shall also provide to the Company upon request such additional information and documents as the Board or the Partnership Representative may reasonably request in connection with the Company's compliance with applicable tax requirements or filing of any permitted tax elections, including any information or documents necessary to make the election under I.R.C. Section 6221(b)(1) (as in effect following the Bipartisan Budget Act of 2015) or to modify an imputed underpayment under I.R.C. Section 6225(c) (as in effect following the Bipartisan Budget Act of 2015). At the request of Partnership Representative in connection with an adjustment of any item of income, gain, loss, deduction,

or credit of the Company or any partnership in which the Company invests, directly or indirectly, each Member shall promptly file one or more amended tax returns in the manner contemplated by I.R.C. Section 6225(c)(2) (as in effect following the Bipartisan Budget Act of 2015) and pay any tax due with respect to such tax returns.

11.05 **Consistent Reporting.** Each Member shall, on the Member's tax returns, treat each item of income, gain, loss, deduction, or credit attributable to the Company in a manner consistent with the treatment of the item on the Company's return. Member shall file a request for an administrative adjustment of partnership items under I.R.C. Section 6227(a) if such request would cause the Member's treatment of the item to be inconsistent with the treatment of the item on the Company's return.

11.06 **Company Funds.** All funds of the Company shall be deposited in its name, or in such name as may be designated by the Partnership Representative, in such checking, savings, or other accounts, or held in its name in the form of such other investments as shall be designated by the Partnership Representative. The funds of the Company shall not be commingled with the funds of any other Person. All withdrawals of such deposits or liquidations of such investments by the Company shall be made exclusively upon the signature or signatures of the Managers or as the Partnership Representative may designate.

11.07 **Survival.** This Article XI shall survive the termination of the Company and the termination of any Member's interest in the Company and remain binding for a period of time necessary to resolve all tax matters with applicable taxing authorities.

## **ARTICLE XII BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS**

12.01 **Maintenance of Books.** The Manager of the Company shall keep books and records of accounts and shall keep minutes of the proceedings of its Members, its Managers and each committee of the Board. The books of account for the Company shall be maintained on a cash basis in accordance with the terms of this Agreement, except that the Capital Accounts of the Members shall be maintained in accordance with Article IV. The calendar year shall be the accounting year of the Company.

12.02 **Accounts.** The Board shall establish and maintain one (1) or more separate bank and investment accounts and arrangements for Company funds in the Company name, with financial institutions and firms that the Board determines. All of the initial bank and investment accounts shall be opened and maintained at [Circle]. The Board shall not commingle the Company's funds with the funds of any Member; however, Company funds may be invested in a manner the same as or similar to the Board's investment of their own funds or investments by their Affiliates.

## **ARTICLE XIII VOLUNTARY TRANSFERS**

13.01 **Limited Right to Non-Sale Transfer.** No Member or Assignee shall make any Non-Sale Transfer of all or any part of its Membership Interest, whether now owned or hereafter acquired and whether or not such Non-Sale Transfer occurs on the Mogul Platform or outside of the Mogul Platform, except (a) to a trust or estate planning vehicle for the benefit of the Member or Member's Family Member(s) whereby the Member has sole control of the trust or estate planning vehicle; (b) with the Ratification by a Simple Majority; provided (i) such consent shall not be unreasonably withheld by the Members and (ii) in the event a vote on the voluntary transfer of a Membership

Interest under this Section 13.01 is not held within forty-eight (48) hours from the receipt of written notice from the transferring Member by Company such consent shall deemed to have been given by the Company and Members; (c) as provided by Article XIV; (d) as a Defaulting Member as provided by Section 15.01; (e) upon winding up or termination, as provided by Section 16.03; Any attempted Non-Sale Transfer by a Person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void ab initio.

**13.02 Right to Sale Transfers.** Members may make any Sale Transfer of all or any part of its Membership Interest, whether now or hereafter acquired, without the consent of any other Members or Manager; provided, however, that such Sale Transfer fully complies with the Transfer Process. Any attempted Sale Transfer by a person of an interest or right, or any part thereof, in or in respect of the Company other than as specifically provided by this Agreement shall be, and is hereby declared, null and void ab initio.

**13.03 Transfer Process.** In the event a Member desires to conduct a Sale Transfer, such Member shall provide the Company prior written notice setting forth the Membership Interests the Member desires to transfer via a Sale Transfer (the “**Sale Transfer Interests**”). The Sale Transfer shall be conducted according to the User Services Agreement and this Agreement and on or through the Mogul Platform (as defined in the User Services Agreement). Upon notice, the Company (through use of the Mogul Platform) shall determine the Fair Value of the Sale Transfer Interests and the Transfer Process shall occur on the Mogul Platform as follows:

(a) The existing Members, as determined on the Avalanche Blockchain immediately before the opening of the sale of the Sale Transfer Interests, shall have, on a first come, first served basis, the option to acquire the Sale Transfer Interests for a period of 24 hours beginning when the Sale Transfer Interests are offered on the Mogul Platform; and

(b) After the expiration of the 24-hour period, any and all unacquired portions of the Sale Transfer Interests shall become available for acquisition on the Mogul Platform for any user of the Mogul Platform.

**13.04 Rights of an Assignee.**

(a) Unless and until an Assignee becomes a Substituted Member as provided in this Agreement, the Assignee shall be entitled only to (i) allocation of income, gain, loss, deduction, credit, or similar items, and to receive distributions to which the assignor is entitled to the extent these items were assigned, and (ii) the information available to Members under Section 3.08, as well as reasonable information or account of transactions of the Company and to make reasonable inspection of the books and records of the Company. The Membership Interest of the Assignee shall not be considered in the voting requirements of the Company, and the Assignee shall have no right to participate in the operations or management of the Company.

(b) In the event that the Members are required to make additional contributions to the Company at a time in which the Membership Interest is held by an Assignee, the Assignor Member and its Assignee shall be jointly and severally liable for the corresponding contribution in connection with the Membership Interest held by Assignee. If the Assignor Member or Assignee does not make such contribution in accordance with the provisions of this Agreement, then the Assignor Member and Assignee shall be treated as being in default. In the event that one (1) or more new Members are admitted into the Company, or one (1) or



more existing Members increase their Membership Interest, the Membership Interest of the Assignee may be correspondingly reduced and no consent or other action on the part of such Assignee shall be required.

**13.05 Legal Opinion.** Intentionally Omitted.

**13.06 Admission as Substituted Member.** Subject to Section 7 an Assignee has the right to be admitted to the Company as a Substituted Member with the Membership Interest so transferred to such Person, in the event that:

(a) the Member making such Transfer grants the Assignee the right to be so admitted;

(b) such Transfer is permitted or consented to in accordance with Sections 13.01 and 13.02; and

(c) a written, signed and dated instrument evidencing the Transfer has been filed with the Company in form and substance reasonably satisfactory to the Board, and said instrument contains (i) the agreement by the Assignee to be bound by all of the terms and provisions of this Agreement, (ii) any necessary or advisable representations and warranties, including that the Transfer was made in accordance with all applicable laws, regulations, and securities laws, (iii) the Membership Interests after the Transfer of the Member effecting the Transfer and the Person to which the Membership Interest of part thereof is transferred (which together must total the Membership Interest of the Member effecting the Transfer before the Transfer) and (iv) the name, address and any other pertinent information necessary for amended Exhibit A and to make distributions. Blockchain technology, smart contract technology, and other electronic forms of record keeping, as determined by the Company, may be used to evidence admission pursuant to the other terms of this Section 13.06(c).

**13.07 Transfer to Existing Member.** In the event of a Transfer to an existing Member, the existing Member shall be automatically deemed to be a Substituted Member once evidence of such Transfer is received by Company.

**13.08 Reasonable Expenses.** The Member effecting a Transfer and the Substituted Member shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the admission of the Substituted Member (including, without limitation, the legal fees incurred in connection with the legal opinions referred to in Section 5) on or before the 10th day after the receipt by that Person of the Company's invoice for the amount due. If payment is not made by the date due, the Person owing the amount shall pay interest on the unpaid amount from the date due until paid at a rate per annum equal to the Default Interest Rate.

## **ARTICLE XIV INVOLUNTARY TRANSFERS**

**14.01 Termination of Marital Relationship.** If the marital relationship of a Member is terminated by death or divorce and such Member does not succeed to all of such Member's spouse's community or separate interest, if any, in the Membership Interest, then the interest shall pass pursuant to the laws of the jurisdiction applicable to the probate, divorce, or intestacy of the jurisdiction with governing authority over such Transfer.

14.02 **Death of Member.** In the event of a death of a Member the interest of such Member shall transfer upon final adjudication of the relevant probate of such Member or the laws of the jurisdiction with governing authority over such intestacy. Such Transfer shall be deemed approved upon the receipt by the Company of sufficient information, legally required to evidence such Transfer.

14.03 **Bankruptcy of Member.** If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Board to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to dispose of the Bankrupt Member's Membership Interest pursuant to the Transfer Process; provided, however, the exercise of said option shall require the Ratification by a Simple Majority of the other Members. In the event that notice of the exercise of such option is given by the Board to the Bankrupt Member (or its representative), the Bankrupt Member shall sell its interest to the Company as provided by this Article XIV.

#### **ARTICLE XV NON-CONTRIBUTIONS AND DEFAULT OF A MEMBER**

15.01 **Failure to Contribute.** If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Agreement, the Company may, on notice to that Member (the "**Non-Contributing Member**"), may reduce the Non-Contributing Member's Membership Interest or other interest in the Company pursuant to the Capital Contribution made by the other Members or any New Members.

15.02 **Breach of User Services Agreement.** If a Member is in default, beyond any applicable cure periods, under the User Services Agreement, such default shall constitute a default under this Agreement and the Company may exercise, on notice to that Member (the "**Defaulting User Services Member**"), one or more of the following remedies:

- (a) reducing the Defaulting User Services Member's Membership Interest or other interest in the Company;
- (b) subordination of the Defaulting User Services Member's Membership Interest to the non-defaulting Member;
- (c) forfeiture of the Defaulting User Services Member's Membership Interest and a forced sale of the Defaulting User Services Member's Membership Interest at Fair Value pursuant to the Transfer Process; or
- (d) exercising any other rights and remedies available at law or in equity.

15.03 **Compromise or Release.** The obligation of a Non-Contributing Member or Defaulting User Services Member or its legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the Non-Contributing Member or Defaulting User Services Member in violation of the TBOC or this Agreement may be compromised or released only with the Ratification by a Simple Majority of the other Members.

15.04 **Expulsion.** A Member may be expelled from the Company by Simple Majority vote of all other Members (not including the Member to be expelled) if that Member (1) has willfully violated any provision of this Agreement or committed a material breach of the User Services Agreement, Real Estate Purchase Agreement, or this Agreement; (2) committed fraud, theft, or gross negligence against the Company or one or more Members of the Company, or (3) engaged in wrongful conduct

that adversely and materially affects the business or operation of the Company (including, but not limited to, persistently failing to contribute time and effort in furtherance of the Company's purpose as previously assigned by the Managers or agreed upon between the Defaulting Member and the Company). Such a Member shall be considered a "**Defaulting Member**," and the Company or other Members may exercise any one or more of the remedies provided for in Section 15.02-Section 15.04. The Company may offset any damages to the Company or its Members occasioned by the misconduct of the expelled Member against any amounts distributable or otherwise payable by the Company to the expelled Member.

**15.05 Determination of Fair Value.** The "**Fair Value**" of a Membership Interest for this Sections 14 and 15 shall be the net value of the Real Property owned by the Property LLC, as determined by Mogul, on a daily basis using proprietary valuation methods of Mogul, that include but are not limited to, lives sales data of competitive real estate and third-party data. The determination of Fair Value made by Mogul shall be final, conclusive, and binding on the Company, all Members, and all Assignees of a Membership Interest.

## **ARTICLE XVI WINDING UP AND TERMINATION**

**16.01 Event Requiring Termination.** The Company shall begin to wind up its affairs upon the first of the following to occur:

- (a) the execution of an instrument approving the termination of the Company by a Super Majority of the Members;
- (b) the occurrence of any event that terminates the continued membership of the last remaining Member; provided, however, that the Company is not dissolved if, no later than 90 days after the termination of the membership of the last remaining Member, the legal representative or successor of the last remaining Member agrees to cancel the event requiring winding up, to continue the Company and to become a Member, or to designate another Person who agrees to become a Member, as of the date of termination of the membership of the last remaining Member;
- (c) entry of a decree of judicial dissolution of the Company; or
- (d) the occurrence of a non-waivable event under the terms of the TBOC which requires the Company to be terminated.

**16.02 Business May Be Continued.** Except as provided in paragraph 16.01(b):

- (a) an event that requires the winding up of the Company's business shall not terminate the Company if, no later than one (1) year after the date of the event, the Members unanimously consent to cancel the event requiring winding up; and
- (b) the expiration of a period of duration that requires the winding up of the Company's business shall not terminate the Company if, no later than three (3) years after the date the period of duration expires, the Members unanimously consent to amend the Company's Certificate of Formation and this Agreement to extend the Company's period of duration.

**16.03 Liquidation.** As soon as possible following an event requiring termination of the

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

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

(b) the liquidator shall cause the notice described in Section 11.052 of the TBOC to be delivered to each known claimant against the Company;

(c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.04) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(d) all remaining assets of the Company shall be distributed to the Members as follows:

(i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members;

(ii) with respect to all Company property that has not been sold, the Fair Market Value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the Fair Market Value of that property on the date of distribution; and

(iii) Company property shall be distributed among the Members in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause (iii)); and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 16.03. Upon completion of all distributions to the Member, such distribution shall constitute a complete return to the Member of its Capital Contributions and release all claims against the Company. To the extent that a Member returns funds to the Company,

it has no claim against any other Member for those funds.

**16.04 Deficit Capital Accounts.** Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the Capital Account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation), or distributions of money pursuant to this Agreement to all Members in proportion to their respective Membership Interests, upon termination of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's Capital Account to zero.

**16.05 Certificate of Termination.** On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Board (or such other Person or Persons as the TBOC may require or permit) shall execute, acknowledge and cause to be filed a Certificate of Termination, at which time the Company shall cease to exist as a limited liability company.

## **ARTICLE XVII AMENDMENT OR MODIFICATION**

**17.01 Amendment or Modification.** Subject to Section 17.02, this Agreement may be amended or modified from time to time only with a written instrument Ratified by a Simple Majority.

### **17.02 Special Provisions for Certain Amendments or Modifications.**

(a) Unless such Member is a defaulting Member (Defaulting Member or Defaulting User Services Member), an amendment or modification reducing a Member's Membership Interest or increasing its Capital Commitment (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent.

(b) An amendment or modification reducing the required Membership Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Membership Interest or other measure theretofore required.

(c) within the authority of Members or otherwise provided in the Certificate of Formation, the TBOC, or resolutions by Members forming the committee.

(d) An amendment or modification made solely to reflect the admission or withdrawal of a Member (such as to Exhibit A) need not be approved by any Member if the requirements set forth in this Agreement with respect to the admission or withdrawal of the Member are otherwise satisfied.

## **ARTICLE XVIII GENERAL PROVISIONS**

**18.01 Binding Effect.** Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors, and permitted assigns. However, unless and until properly admitted as a Member, no Assignee will have any rights of a Member beyond those provided in this Agreement or granted by the TBOC to assignees.

**18.02 Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. In the event there is only one (1) Member,

then references to Members in the plural should be construed as singular; likewise, in the event there is only one (1) Manager, then references to Managers in the plural should also be construed as singular. Where used, the term “including” or “include” shall mean “including without limitation.” It is the intention of the parties that every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (notwithstanding any rule of law requiring an Agreement to be strictly construed against the drafting party), it being understood that the parties to this Agreement are sophisticated and have had adequate opportunity and means to retain counsel to represent their interests and to otherwise negotiate the provisions of this Agreement.

**18.03 Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same instrument.

**18.04 Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

**18.05 Entire Agreement; Supersedes Other Agreements.** This Agreement, including the exhibits hereto, includes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

**18.06 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

**18.07 Governing Law.** THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT, AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT (WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER THEORY), ARE GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

**18.08 Indemnification by Members.** To the fullest extent permitted by law, each Member shall indemnify the Company, each Manager and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including, without limitation, costs of suit and attorney’s fees) they may incur on account of any breach by that Member of this Agreement.

**18.09 Notices.** Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier, electronic mail, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the person. All

notices, requests, and consents to be sent to a Member must be sent to or made at the addresses given for that Member on Exhibit A or such other address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company or the Members must be given to the Members at the following address:

800 Maine Ave SW, STE 200, Washington, DC 20024

Whenever any notice is required to be given by law, the Certificate of Formation or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**18.10 Offset.** Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

**18.11 Severability.** In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without such provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any Member or alters any material term of this Agreement. Any severed provision shall be amended as best as possible in order to effect the original intent of the Members.

**18.12 Waiver of Certain Rights.** Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the property of the Company.

**18.13 WAIVER OF JURY TRIAL.** EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF RELATING TO THIS AGREEMENT FOR THE TRANSACTIONS CONTEMPLATED HEREBY.

## **ARTICLE XIX NOTICES AND DISCLOSURES**

**19.01 Compliance with Regulation D of the Securities Act.** THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE BOARD (WHICH, IN THE DISCRETION OF THE BOARD, MAY INCLUDE AN OPINION OF COUNSEL) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS. THE MEMBERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS COMPANY AGREEMENT ARE SUBJECT TO RESTRICTIONS ON THE SALE, PLEDGE, TRANSFER, OR OTHER DISPOSITION AS SET FORTH IN THIS COMPANY AGREEMENT.

**19.02 Notice to Members.** By executing this Agreement, each Member acknowledges that it has actual notice of all of the provisions of this Agreement, including, without limitation, the restrictions on the transfer of Membership Interests set forth in this Agreement, and all of the provisions of the Certificate of Formation. Except as otherwise expressly provided by law, each Member hereby agrees that this Agreement constitutes adequate notice of any notice requirement under Chapter 8 of the Uniform Commercial Code, and each Member hereby waives any requirement

that any further notice thereunder be given.

**19.03 Limitation of Liability.** Pursuant to Section 33N(3) of the Texas Securities Act, the liability of a Service Professional is limited to a maximum of three times (3x) the fee paid by the Company or seller of the Company's securities, unless the trier of fact finds that such Service Professional engaged in intentional wrongdoing in providing the services. By executing this Agreement, each Member hereby acknowledges the disclosure contained in this Section 19.03.

**19.04 Limited Power of Attorney for Company Purposes.** Each Member, by execution of this Agreement or a counterpart hereof, irrevocably constitutes and appoints each Manager, with full power of substitution, its agent and attorney-in-fact in its name, place, and stead for the limited purposes of making, executing, swearing to, verifying, acknowledging, amending, filing, recording, delivering, and publishing (a) any documents necessary to effect any Transfer of a Membership Interest and Capital Account to the Company as provided in this Agreement and to make, execute, sign, acknowledge, deliver, and file any assignments, deeds, conveyances, documents, or other instruments deemed necessary or appropriate by the Board to effect such a Transfer; (b) any certificate or amendment to any certificate required to be filed on behalf of the Company pursuant to the TBOC; (c) a counterpart of any amendment to this Agreement for the purpose of substituting as a Member an assignee or assignees of a Member; (d) a counterpart of this Agreement or any amendment hereto for the purpose of filing or recording such counterpart in any jurisdiction in which the Company may own property or transact business; (e) all certificates and other instruments necessary to continue the Company as a limited liability company in the jurisdictions where the Company may own property or transact business; (f) any fictitious or assumed name certificate required or permitted to be filed by or on behalf of the Company; (g) any other instrument that is now or may hereafter be required by law to be filed on behalf of the Company that does not increase the obligations of the Members; (h) an authorized certificate or other instrument inducing the dissolution or termination of the Company, when such shall be appropriate, in each jurisdiction in which the Company shall own property or transact business; and (i) any other certificates or instruments necessary, advisable, or appropriate to conduct the business and affairs of the Company that do not increase the obligations of the Members. The existence of such power of attorney will not preclude execution of any such instrument by a Member individually with respect to any such matter. The power of attorney granted by this Section 19.04 is irrevocable and will survive the Transfer by a Member of all or any part of its Membership Interest and, being coupled with an interest, shall survive the incapacity or other legal disability of such Member. Any person dealing with the Company may, without further inquiry, conclusively presume and rely upon the fact that any certificate or instrument encompassed by this Section 19.04 and executed by such agent and attorney-in-fact is authorized, valid, and binding.

*[Signature Page to Follow]*



IN WITNESS HEREOF, the Board has adopted this Company Agreement and the Members have executed this Company Agreement, as of the Effective Date.

**MANAGERS:**

Manager

By: Alexander Blackwood

Name: Alexander Blackwood

Title: Managing Member

Manager

By: Joseph Gumataotao

Name: Joseph Gumataotao

Title: Managing Member

**MEMBERS:**

See Exhibit A

**EXHIBIT A**

**MEMBERS OF MOGUL 13906 TALLHEATH LLC**

**Records of ownership of the Company are held on the Avalanche Blockchain platform and available upon request to Manager of the Company.**



**Log of ownership / tokens attributed to the smart contract can be accessed with  
TokenID[3]:**

<https://snowtrace.io/nft/0xfE941F910BcF74D8F2dA0D38df0eF133e6913029/3?chainid=43114>