**EXECUTION COPY**

# LIMITED LIABILITY COMPANY AGREEMENT

# OF

# ACE GROUP INTERNATIONAL LLC

# A DELAWARE LIMITED LIABILITY COMPANY

# DATED AS OF SEPTEMBER 16, 2011

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EXHIBITS AND SCHEDULES

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**ACE GROUP INTERNATIONAL LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT of ACE GROUP INTERNATIONAL LLC (this "Agreement") is made and entered into and is effective as of September __, 2011 (the "Effective Date"), by and among (i) ECOPLACE LLC, a Delaware limited liability company (the "Investor"), (ii) ALEX CALDERWOOD, an individual residing at 1000 Union Street, Apt. C, Seattle, Washington 98101 ("Calderwood") and (iii) ACE GROUP INTERNATIONAL LLC, a Delaware limited liability company (the "Company"). Each of Investor, Calderwood and the Company are a "Party" and together are the "Parties" to this Agreement.

W I T N E S S E T H:

WHEREAS, Ace Group International, LLC, a Washington limited liability company ("AGI Washington"), Jack Barron ("Barron"), Doug Herrick ("Herrick"), Wade Weigel ("Weigel") and Calderwood entered into that certain Membership Interest Purchase Agreement, dated as of February 4, 2011 (as first amended on August 2, 2011, second amended on August 26, 2011 and third amended on September 7, 2011) (the "Master MIPA"), pursuant to which Barron, Herrick and Weigel agreed to Transfer, in the aggregate, seventy five percent (75%) of the outstanding ownership interests in each of Atelier Ace LLC, an Oregon limited liability company, Ace Hotel Palm Springs LLC, a California limited liability company, Ace Hotel New York LLC, a New York limited liability company, and Ace Hotel Group LLC, a Delaware limited liability company (collectively, the "Ace Entities") to AGI Washington upon the receipt of requisite financing by Ace Washington, all on the terms and conditions set forth therein;

WHEREAS, AGI Washington and each of R2H, LLC, Mark Callaghan, Michael Corliss (as Co-Trustee of Evergreen Capital Trust), Kingfisher Capital, Peter Joers III and Peter Joers II (collectively, the "Modern Housing Investor Group") entered into that certain Membership Interest Purchase and Sale Agreement, dated as of June __, 2011, pursuant to which the Modern Housing Investor Group agreed to transfer, in the aggregate, thirty percent (30%) of the outstanding ownership interests in Modern Housing, LLC, a limited liability company organized under the Laws of the State of Washington ("Modern Housing" and together with the Ace Entities, the "Contributed Companies"), to AGI Washington upon the receipt of requisite financing by AGI Washington, all on the terms and conditions set forth therein (the "Modern Housing MIPA");

WHEREAS, the Company was formed on August 29, 2011, pursuant to the Act;

WHEREAS, pursuant to (i) that certain Assignment and Assumption Agreement, dated the Effective Date, attached hereto as Exhibit L, the rights and obligations of AGI Washington under the Master MIPA were assigned to, and assumed by, the Company (the "Master Assignment and Assumption Agreement") and (ii) that certain Assignment and Assumption Agreement, dated the Effective Date, attached hereto as Exhibit M, the rights and

obligations of AGI Washington under the Modern Housing MIPA were assigned to, and assumed by, the Company (the "Modern Housing Assignment and Assumption Agreement" and together with the Master Assignment and Assumption Agreement, the "Assignment Agreements" and collectively with the Master MIPA and the Modern Housing MIPA, including the exhibits and schedules thereto and the consents, waivers and certificates deliverable in connection therewith, and the IP Assignments, the "Buyout Agreements");

WHEREAS, the Members desire to participate in the Company for the purposes described herein and have entered into this Agreement in order to regulate certain aspects of their relationship and provide for, among other things, the governance and management of the Company, rights, obligations and restrictions with respect to the Transfer of membership interests in the Company and other matters pertaining to the Members' ownership of the Company; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the transactions contemplated by the Buyout Agreements will be consummated (the "Buyout Closing"), immediately following which the Company shall, through its ownership interests in the Contributed Companies, become engaged in the business of providing hotel management and operations services, including, without limitation, providing or coordinating administration and accounting services, marketing and reservation systems, GM and executive team placement, sales and events personnel, housekeeping services, front office, food and beverage management, catering and maintenance services and other related services on behalf of hotels operating under the Ace Hotels brand and/or independent hotel owners seeking professional management or operators (the "Business").

NOW, THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## Section 1. Definitions

Capitalized terms used herein shall have the meanings ascribed to such terms in this Agreement (including, without limitation, Exhibit B and the other Exhibits and Schedules attached hereto).

## Section 2. Organization of the Company

2.1. Name. The name of the Company shall be "ACE Group International LLC". The business and affairs of the Company shall be conducted under such name or such other name as the Members mutually deem necessary or appropriate to comply with the requirements of Law in any jurisdiction in which the Company may elect to do business.

2.2. Place of Registered Office; Registered Agent. The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801. The name and address of the registered agent for service of process on the Company in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801.

2.3. Principal Office. The principal address of the Company shall initially be 19 NW 5th Avenue, 3rd Floor, Portland, Oregon 97209 until office space for the Company is secured in New York, New York by the Parties at which point such New York location shall be the principal address of the Company, or at such other place or places as may be mutually agreed by the Parties thereafter from time to time.

2.4. Filings. On or before execution of this Agreement, an authorized person within the meaning of the Act shall have duly filed or caused to be filed the Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware, as provided in Section 18-201 of the Act, and the Members hereby ratify such filing. The Members shall use their respective commercially reasonable efforts to take such actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the Laws of the State of Delaware. The Members shall cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar Laws in any jurisdiction in which the Company transacts business where such qualification, formation or registration is required or desirable. The Managers shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business. Notwithstanding anything contained herein to the contrary, the Company shall not do business in any jurisdiction that would jeopardize the limitation on Liability afforded to the Members under the Act or this Agreement.

2.5. Term. The Company shall continue in existence from the date hereof in perpetuity until the Company is dissolved and terminated as provided in Section 10.

2.6. No Partnership. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be an agent, partner or joint venture of any other Member for any purposes other than tax purposes, and this Agreement shall not be construed to suggest otherwise.

2.7. Subsidiaries. The business and affairs of the Company shall be conducted through the Company and the Contributed Companies and/or, upon the mutual agreement of the Parties in writing, one or more Subsidiaries.

2.8. Purpose. The purpose of the Company, subject in each case to the terms hereof, shall be to directly, or indirectly through the Contributed Companies and such other Subsidiaries formed at the direction of the Company, engage in any Lawful business activities of any nature which may be conducted under the Act, including, but not limited to, the Business and all other activities related or incidental to the foregoing.

2.9. Expenses. Except as otherwise specifically provided in this Agreement or as set forth in Schedule 2.9 hereto, each of the Company and each Member shall bear its own costs and expenses in connection with entering into this Agreement and the consummation of the transactions and performance of its obligations contemplated hereby.

Section 3. Capital Contributions, Percentage Interests and Capital Accounts

3.1. Initial Capital Contributions. On the Effective Date:

(a) Calderwood hereby contributes to the Company and the Company hereby accepts as a Capital Contribution, the Calderwood Contributed Interests, free and clear of any Liens, Orders or other limitations whatsoever.

(b) The Investor hereby makes a Capital Contribution to the Company, in cash, in the aggregate amount of Ten Million U.S. Dollars (U.S. $10,000,000) by wire transfer in immediately available funds to an account or accounts designated by the Company (the "Investor Contribution"). Unless otherwise mutually agreed by the Members, the Investor Contribution shall be used for the purposes described on Schedule 3.1 hereto.

3.2. Additional Capital Contributions.

(a) Subject to the Investor Consent Rights, additional capital may be called for from the Members by the Board by written notice to the Members from time to time as and to the extent capital is necessary to fund investments or expenditures approved by the Board, in each case in accordance with the Annual Business Plan ("Additional Capital Contributions"). Subject to the Investor Consent Rights, the amount of such Additional Capital Contributions for each Member, and any adjustments to each Member's Percentage Interest, shall be determined by the Board. Such Additional Capital Contributions shall be payable by the Members to the Company upon the earlier of (i) twenty (20) days after receipt of notice therefor from the Board or (ii) the date when the Capital Contributions are required, as set forth in a written request from the Board.

(b) If a Member (a "Non-Funding Member") fails to make a Capital Contribution that is required as provided in Section 3.1 or an Additional Capital Contribution pursuant to Section 3.2(a) (the amount of the failed Capital Contribution shall be the "Default Amount") within the time frame required therein, the other Member, provided that it has made the Capital Contribution required to be made by it, in addition to any other remedies it may have hereunder or at Law, shall have one or more of the following remedies (such Member exercising such remedy is hereinafter referred to as a "Contributing Member"):

(i) to advance to the Company as a loan to the Company an amount equal to the Default Amount and to treat its portion of such Capital Contribution as a loan to the Company (rather than a Capital Contribution) (such loans, each a "Company Loan"). At the election of the Contributing Member, the Company Loan shall be evidenced by a promissory note in form reasonably satisfactory to the Contributing Member. Each Company Loan shall (i) bear interest at the Default Loan Rate, and (ii) subject to the last sentence of this paragraph, be payable on a first priority basis by the Company from Distributable Funds and prior to any Distributions made to the Non-Funding Member. Interest on a Company Loan, to the extent unpaid, shall accrue and compound on a monthly basis. All payments made in respect of any Company Loan shall be applied first to payment of any interest due under such Company Loan and then to principal

until all amounts due thereunder are paid in full. Any advance to the Company pursuant to this paragraph shall not be treated as a Capital Contribution made by the Non-Funding Member and the Capital Account of such Non-Funding Member shall not be credited with the amount of such Company Loan or any portion thereof. All outstanding Company Loans shall be repaid (in accordance with the terms hereof) on a *pari passu, pro rata* basis in proportion to the outstanding balances of such Company Loans at the time of payment to the extent repayment is permitted by the terms of any financing to which the Company is subject; or

(ii) in lieu of the remedies set forth in subparagraph (i) above, revoke its portion of such Additional Capital Contribution, whereupon the portion of the Capital Contribution made by the Contributing Member (together with interest computed at the Default Loan Rate) shall be returned by the Company to the Contributing Member within ten (10) days after the Contributing Member elects to revoke its Capital Contribution pursuant to this paragraph.

3.3. Percentage Ownership Interest. Each Member shall, immediately following the receipt by the Company of the Capital Contributions required to be made by such Member pursuant to Section 3.1 hereof, have the initial percentage ownership interests (as the same may be adjusted as provided in this Agreement, a "Percentage Interest") in the Company and the initial Capital Account balance as set forth opposite such Member's name on Exhibit A under the headings entitled Initial Percentage Interest and initial Capital Account balance, respectively. Percentage Interests shall not be adjusted by Distributions made (or deemed made) to a Member.

3.4. Return of Capital Contribution. Except as approved by Investor and Calderwood in writing, no Member shall have any right to withdraw or make a demand for withdrawal of such Member's Capital Contributions or the balance reflected in such Member's Capital Account (as determined under Section 3.6) until the full and complete winding up and liquidation of the business of the Company.

3.5. No Interest on Capital. Interest earned on Company funds shall inure solely to the benefit of the Company, and no interest shall be paid upon any Capital Contributions nor upon any undistributed or reinvested income or profits of the Company.

3.6. Capital Accounts.

(a) The Company shall establish and maintain a separate Capital Account for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv) and in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's allocable share of Net Profits, any items in the nature of income or gain that are specially allocated to such Member under Section 5.2, and the amount of any liabilities of the Company that are assumed by such Member (or liabilities that are secured by any Company Assets distributed to such Member). The principal amount of a promissory note

that is not readily traded on an established securities market and that is contributed to the Company by the maker of such note (or a Member related to the maker of such note within the meaning of Regulations Section 1.704-1(b)(ii)(c)) shall not be credited to the Capital Account of any Member until the Company makes a taxable disposition of such note or until (and to the extent) principal payments are made on such note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

(ii) To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company Assets distributed to such Member pursuant to any provision hereof (net of liabilities secured by such distributed Company Assets that such Member is considered to assume or take subject to under Code Section 752), such Member's allocable share of Net Losses, any items in the nature of expenses or losses that are specially allocated to such Member under Section 5.2, and the amount of any liabilities of such Member that are assumed by the Company (or liabilities that are secured by any property contributed by such Member to the Company).

(iii) If any interest in the Company is transferred in accordance with the terms hereof, then the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest. In the case of a sale or exchange of an interest in the Company at a time when an election under Code Section 754 is in effect, the Capital Account of the transferee Member shall not be adjusted to reflect the adjustments to the adjusted tax basis of Company Assets required under Code Sections 754 and 743, except as otherwise required or permitted by Regulations Section 1.704-1(b)(2)(iv)(m).

(iv) In determining the amount of any liability for purposes of Sections 3.6(a)(i) and (ii), there shall be taken into account Code Section 752(c), and any other applicable provisions of the Code.

(b) The foregoing provisions of this Section 3.6 and the other provisions hereof relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

(c) If the Board determines that it is prudent to modify the manner in which any debits or credits are made to the Capital Accounts (including debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or any Members), the Board may make such modification, provided that it is not likely to have a material effect on the amounts distributed to any Person pursuant to Section 10.3 upon the dissolution of the Company.

(d) The Board also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate

modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.7. Issuance of New Interests.

(a) From the period commencing on the Effective Date and ending on the first (1st) anniversary of the Effective Date (the "Lock-Out End Date"), the Company shall not offer any additional Interests (of any series or class) or other securities of the Company, including, without limitation, rights, options, warrants, promissory notes, debentures or other debt securities, but excluding Management Interests issued pursuant to the terms and conditions of Section 9.5 hereof (collectively, "New Interests") to any Person. For so long as the Investor owns any Interests in the Company, in the event the Company, at any time or from time to time after the Lock-Out End Date, proposes to issue New Interests, the Company shall first deliver a written notice to the Investor that sets forth the terms, including the purchase price, of the proposed issuance and sale. Following receipt of such notice, the Investor shall have thirty (30) days to accept the offer to purchase all or any portion of the New Interests proposed to be issued by the Company.

(b) If the Investor either rejects or fails to accept such offer, in whole or in part, within such thirty (30) day period, then the determination as to (i) whether or not the Company should proceed to propose a sale of New Interests not purchased by the Investor pursuant to Section 3.7(a) above to one or more third parties unaffiliated with the Company and its Members in a single or series of related transactions, and (ii) if so, (x) the terms and conditions of such third party transaction, which shall be no more favorable than those offered to the Investor pursuant to Section 3.7(a) above, and (y) the length of time in which the Company can solicit potential purchasers, shall in each case be subject to Board approval (including the approval of the Investor Manager pursuant to Section 7.3 and Exhibit E hereof). Any third party transaction which is approved pursuant to the preceding sentence is hereby referred to as an "Approved New Issuance." Notwithstanding the foregoing, the rights of the Investor under Section 3.7(a) above shall be fully restored and reinstated with respect any future issuance of New Interests other than the Approved New Issuance.

(c) Subject to prior compliance with the terms of Section 3.7(a) above, the third party purchaser of Interests in any Approved New Issuance must first agree in writing to be bound by the terms of this Agreement by becoming a party hereto and deliver such additional documentation as the Board and the Members shall require to so admit such new Member to the Company.

(d) In order to permit the Company to qualify for the benefit of a "safe harbor" under Code Section 7704, notwithstanding anything to the contrary herein, no Transfer of any Interest will be permitted or recognized by the Company (within the meaning of Regulations Section 1.7704-1(d)) and the Company shall not issue any Interests if and to the extent that such Transfer or issuance would cause the Company to have more than 100 partners (within the meaning of Regulations Section 1.7704-1(h), including the look-through rule in Regulations Section 1.7704-1(h)(3)).

3.8. Buyout Closing. The funding of the Buyout Closing will be consummated on the Effective Date contemporaneously with the execution and delivery of the Agreement in accordance with the Flow of Funds Memorandum, a redacted copy of which is attached as Exhibit K hereto.

3.9 Letters of Intent. Promptly following the Effective Date, Calderwood shall meet, either in person or telephonically, with the Investor Manager to discuss the terms and conditions of each of the letters of intent identified on Schedule 3.9 hereto to which Alex Calderwood and/or AGI Washington is a party (the "LOIs") and provide the Investor Manager with such background information as the Investor Manager deems reasonably necessary to evaluate the proposed projects which are the subject of such LOIs. No later than ten (10) Business Days (the "Post-Closing Period") following the Effective Date, Calderwood shall assign, and shall cause AGI Washington to assign, to the Company only such LOIs as are designated in writing by the Investor Manager pursuant to the Assignment and Assumption Agreement of the Letters of Intent in the form attached hereto as Exhibit N ("Letters of Intent Assignment and Assumption Agreement") and shall execute and deliver such other instruments and documents as may be necessary or expedient to effectuate such assignment. In connection therewith, Calderwood shall use reasonable best efforts to procure the consents of any counterparties to such LOIs as may be required pursuant to their respective terms or under applicable Law. In the event such required consents cannot be obtained by the expiration of the Post-Closing Period, Calderwood shall have a continuing obligation to use his reasonable best efforts to obtain such consents and will cooperate with the Company in any reasonable and lawful arrangements designed to provide to the Company the claims, rights and benefits of such LOIs.

## Section 4. Distributions

4.1. Non-Liquidating Distributions of Distributable Funds. Subject to Sections 3.2, 4.2, 4.3 and 10.3 hereof, the Board shall calculate and determine the amount of Distributable Funds and shall determine the date on which Distributable Funds shall be distributed to the Members, subject, in each case, to the Investor Consent Rights with respect to Distributions. Distributions of Distributable Funds (other than Distributions in liquidation of the Company, which shall be governed solely by Section 10.3) shall be distributed to the Members in the following order and priority:

(a) First, to the Investor an amount equal to the aggregate amount of Capital Contributions made by the Investor to the Company and not yet returned under this Section 4.1(a) or Section 4.1(b) until the aggregate amount of Distributions received by the Investor pursuant to this Section 4.1(a) or, to the extent treated as a return of Capital Contributions, pursuant to Section 4.1(b) is equal to the aggregate amount of Capital Contributions made by the Investor ("Priority Distributions"); provided, however, that the maximum amount of Distributable Funds that may be distributed to Investor pursuant to this Section 4.1(a) in any single Fiscal Year (including the Fiscal Year ending December 31, 2011) will not exceed One Million U.S. Dollars (U.S. $1,000,000) (the "Annual Cap"); provided further, that the Annual Cap will be increased in any Fiscal Year by an aggregate amount equal to (i) the Aggregate

Permitted Cap Payments minus (ii) the aggregate amount of Priority Distributions previously made to the Investor; and

(b) Second, the balance if any, of any Distributable Funds available for Distribution after Priority Distributions pursuant to Section 4.1(a) above shall be distributed to the Members, on a *pari passu* basis, *pro rata* in proportion to their respective Percentage Interests; provided, however, that any Distributions to the Investor pursuant to this Section 4.1(b) will be treated as a return of the Investor's Capital Contributions until the Investor has received aggregate Distributions under Section 4.1(a) above and this Section 4.1(b) equal to the aggregate amount of Capital Contributions made by the Investor; provided, further, that, unless otherwise provided in the Management Incentive Program pursuant to which the Company issued Management Interests, and, subject to the paragraph immediately below, each holder of Management Interests shall only be entitled to receive Distributions pursuant to this Section 4.1(b) up to the amount, if any, of the initial Capital Contributions made with respect to such Management Interests until such time as the amount of Distributions pursuant to this Section 4.1 made by the Company after the issuance of such Management Interests has exceeded the applicable Benchmark Amount, after which this proviso shall not apply with respect to such Management Interests.

Notwithstanding the immediately preceding paragraph, (A) the portion of any Distribution (other than a Tax Distribution) that would otherwise be made with respect to any unvested Management Interest shall not be distributed with respect to such unvested Management Interest and shall instead be distributed solely with respect to other Interests (including vested Management Interests) pursuant to the foregoing provisions of this Section 4.1(b) applied as though no unvested Management Interest were outstanding, (B) if one or more amounts are not distributed with respect to an unvested Management Interest pursuant to clause (A) of this proviso, and such unvested Management Interest subsequently vests, then all Distributions pursuant to this Section 4.1(b) made following the vesting of such Management Interest shall be made such that, on a cumulative basis, the Distributions with respect to such Management Interest under this Section 4.1(b) equal the Distributions that would have been made with respect to such Management Interest under this Section 4.1(b) if it had been a vested Management Interest on the date of its original issue and (C) if such unvested Management Interest is repurchased or forfeited (or otherwise becomes incapable of vesting) as contemplated pursuant to this Agreement, then such unvested Management Interest shall not be entitled to receive or retain any Distributions other than any Tax Distributions that are required to be or have been made with respect to such unvested Management Interest.

4.2. Distribution Priority for Indemnities. Any Distributions or other amounts (including, without limitation, amounts payable in respect of Company Loans) otherwise payable to a Member under this Agreement shall be applied first to satisfy amounts due and payable on account of the indemnity and/or contribution obligations and/or any other obligations, including, without limitation, any Inducement Obligation of Calderwood under this Agreement and/or any other agreement delivered by such Member (or its Affiliates) to the Company or a Subsidiary or any other Member (or its Affiliates) but shall be deemed distributed or paid, as the case may be, to such Member for purposes of this Agreement.

4.3. Tax Distributions. So long as the Company is treated as a partnership for federal income tax purposes, to the extent of available Distributable Funds, the Board shall cause the Company to distribute to each Member with respect to each Fiscal Quarter an amount of cash (a "Tax Distribution") which in the good faith judgment of the Board equals the excess, if any, of (a) the amount of taxable income (including, for the avoidance of doubt, Code Section 704(c) gain) allocable to such Member in respect of such Fiscal Quarter and all prior Fiscal Quarters (net of taxable Net Losses allocated to such Member in respect of prior Fiscal Quarters) multiplied by the Assumed Tax Rate over (ii) the cumulative Tax Distributions previously made to such Member pursuant to this Section 4.3 for all previous Fiscal Quarters. Each Tax Distribution pursuant to this Section 4.3, to the extent a Member is entitled to such Tax Distribution by virtue of taxable income allocated to such Member by virtue of Section 5, shall be treated as an advance to such Member of amounts to which it is otherwise entitled under Section 4.1.

## Section 5. Allocations.

### 5.1 Allocation of Net Income and Net Losses.

(a) General. After taking into account the special allocations set forth in Section 5.2, and subject to Section 5.1(b), the Net Profits and Net Losses for each Allocation Year shall be allocated among the Members in the manner that will cause their Capital Accounts to proportionately equal, as closely as possible, the excess of (i) the amount that would be distributable to the Members under Section 10.3 if the Company were dissolved, its affairs wound up and (A) all Company Assets were sold on the last day of the Allocation Year for cash equal to their respective Gross Asset Values (except Company Assets actually sold during such Allocation Year shall be treated as sold for the consideration received therefor), (B) all Company liabilities were satisfied (limited, with respect to each "partner nonrecourse Liability" and "partner nonrecourse debt," as defined in Regulations Section 1.704-2(b)(4), to the Gross Asset Value of the Company Assets securing such liabilities) and (C) the net assets were immediately distributed in accordance with Section 10.3 to the Members over (ii) such Member's share (if any) of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of Company Assets. For purposes of allocating Net Profits and Net Losses, and all other items of income, gain, deduction and loss, pursuant to this Section 5.1 (and Section 5.2, to the extent applicable), all outstanding Management Interests shall be treated as vested Management Interests; provided, that, if a Member's unvested Management Interests are forfeited and the Company has made a Safe Harbor Election that applies to the forfeited Management Interests, then Net Profits and Net Losses arising in the Allocation Year in which such forfeiture occurs shall be allocated in compliance with then applicable IRS guidance with respect to Safe Harbor Elections.

(b) Limitation on Loss Allocations. If any allocation of Net Losses would cause a Member to have an Adjusted Capital Account Deficit, those Net Losses instead shall be allocated to the other Members *pro rata* until their Capital Accounts are reduced to zero, and any remaining Net Losses will be allocated to each Member in accordance with the Percentage Interest held by such Member.

5.2 Special Allocations. The following allocations shall be made prior to the allocations set forth in Section 5.1 and in the following order and priority:

(a) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Section 5, if there is a net decrease in Company Minimum Gain during any Allocation Year, each Member shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.2(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Section 5, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Allocation Year, each Member that has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.2(b) is intended to comply with the minimum gain chargeback requirement in Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), then items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, any Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 5.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 5 have been tentatively made as if this Section 5.2(c) were not in this Agreement.

(d) Gross Income Allocation. If a Member has an Adjusted Capital Account Deficit at the end of any Allocation Year, then such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 5.2(d) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 5 have been made as if Section 5.2(c) and this Section 5.2(d) were not in this Agreement.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Allocation Year shall be allocated to the Member that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(f) Nonrecourse Deductions. Nonrecourse Deductions for any Allocation Year shall be allocated to each Member in accordance with the Percentage Interest held by such Member.

(g) Section 754 Adjustments. To the extent that an adjustment to the adjusted tax basis of any Company Asset pursuant to Code Section 734(b) or 743(b) is required pursuant to Regulations Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of such Company Asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated (i) to the Members in accordance with their respective interests in the Company, if Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or (ii) to the Member to which such distribution was made, if Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) Curative Allocations. The allocations set forth above in Section 5.1(b) and Sections 5.2(a) through (g) (collectively, the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 5.2(h). Therefore, notwithstanding any other provisions of this Section 5 (other than the Regulatory Allocations), the Board shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to this Section 5 without regard to the Regulatory Allocations.

5.3 Other Allocation Rules.

(a) Net Profits, Net Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Section 5 as of the last day of each Allocation Year; provided, that Net Profits, Net Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company Assets are adjusted pursuant to paragraph (ii) of the definition of Gross Asset Value.

(b) For purposes of determining the Net Profits, Net Losses, or any other items allocable to any period, Net Profits, Net Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Code Section 706 and the Regulations thereunder.

(c) The Members acknowledge the income tax consequences of the allocations made by this Section 5 and shall report their respective shares of Company income and loss for income tax purposes in a manner consistent with this Section 5.

5.4 Tax Allocations; Code Section 704(c) Allocations.

(a) Except as otherwise provided in this Section 5.4, each item of Company income, gain, loss and deduction for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under this Section 5, except that if such allocation is not permitted by the Code or other applicable Law, then the Company's subsequent income, gains, losses, deductions and credits for federal income Tax purposes will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their respective Capital Accounts.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value using the traditional allocation method set forth in Regulations Section 1.704-3(d).

(c) In the event the Gross Asset Value of any Company Assets is adjusted pursuant to paragraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such Company Assets shall take account of any variation between the adjusted basis of such Company Assets for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(d) Any elections or other decisions relating to such allocations shall be made by the Board, in any manner that reasonably reflects the purpose and intention hereof. Allocations pursuant to this Section 5.4 are solely for purposes of federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provision hereof.

Section 6. Books, Records and Tax Matters and Bank Accounts.

6.1. Books and Records. The books and records of account of the Company shall be maintained in accordance with GAAP, consistently applied. The books and records shall be maintained at the Company's principal office or at a location designated by Investor and Calderwood, and all such books and records (and the dealings and other affairs of the Company and the Subsidiaries) shall be available to any Member at such location for review, investigation, audit and copying, at such Member's sole cost and expense, during normal business hours on at least twenty-four (24) hours prior notice. In connection with such review, investigation or audit, such Member (and its Managers and agents) shall have the unfettered right to meet and consult with any and all employees and officers of the Company or any of the Subsidiaries and to attend meetings and independently meet and consult with any and all third parties (including, without

limitation, governmental agencies and/or lenders) having dealings or any other relationship with the Company or any of the Subsidiaries.

6.2. Reports and Financial Statements

(a) Within twenty (20) days after the end of each month, Calderwood shall cause each Member to be furnished with the reports described in Exhibit C attached hereto and such other reports deemed appropriate by Investor or reasonably requested by any Member, computed as of the last day of the applicable period, calculated for such period and for the Fiscal Year to date, together with a statement of all transactions with and/or fees paid to Affiliates of the Members.

(b) In addition to the reports described in Section 6.2(a), within twenty (20) days of the end of each Fiscal Quarter, Calderwood shall cause each Member to be furnished with the quarterly reports described in Exhibit D attached hereto.

(c) In addition to the reports described in Sections 6.2(a) and (b), within sixty (60) days of the end of each Fiscal Year, Calderwood shall cause each Member to be furnished with two sets of the following additional annual reports computed as of the last day of the Fiscal Year:

(i) An audited balance sheet of the Company;

(ii) An audited statement of the Company's profit and loss;

(iii) A statement of the Members' Capital Accounts and changes therein for such Fiscal Year; and

(iv) The additional annual reports and annual business plan information described on Exhibit D attached hereto and such other reports, information and statements that may be requested from time to time by Investor.

The annual reports required by this Section 6.2(c) shall, to the extent applicable, be prepared in accordance with GAAP, consistently applied.

(d) All reports and financial statements required by this Section shall be in form and substance satisfactory to Investor and the timetables required by Investor for the delivery thereof. The expenses incurred in connection with the preparation of such reports and statements shall be borne by the Company. Any reports or financial statements required to be audited shall be audited by Berdon LLP or such other firm of independent certified public accountants approved by Investor and Calderwood.

6.3. Tax Matters Member. Calderwood is hereby designated as the "tax matters partner", as defined in Code Section 6231(a)(7) (the "Tax Matters Member"), of the Company. The Tax Matters Member is hereby authorized and required to represent the Company at the direction of the Board (at the expense of the Company) in connection with all examinations of the affairs of the Company by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the

Company for professional services and costs associated therewith. The Board may change or otherwise designate the Tax Matters Member. The Tax Matters Member shall take such action as may be reasonably necessary to cause each other eligible Member to become a "notice partner" within the meaning of Code Section 6231(a)(8). To the extent and in the manner provided by applicable Code sections and Regulations thereunder, the Tax Matters Member (i) shall furnish the name, address, profits interest and taxpayer identification number of each Member to the IRS and (ii) shall keep the Members reasonably informed of all administrative and judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes. Notwithstanding anything in this Agreement to the contrary, the Tax Matters Member, in its capacity as such, shall not, without the prior approval of the Investor, (i) extend the statute of limitations for the assessment of any tax, (ii) file a petition for judicial review of a "final partnership administrative adjustment" within the meaning of Code Section 6226(a), (iii) file a tax claim, on behalf of the Company, in any court, (iv) submit any request for administrative adjustment on behalf of the Company, or (v) bind the Members to any tax settlement. The Tax Matters Member shall notify the other Members within five Business Days after it receives notice from the IRS (or any state and local tax authority) of any administrative proceeding with respect to an examination of, or proposed adjustment to, any Company tax items.

6.4. Tax Returns. The Company shall prepare and timely file, or cause to be prepared and timely filed, all federal, state and local income tax returns or other returns or statements required by applicable law. The Company shall deliver or cause to be delivered, within 120 days after the end of each Fiscal Year, to each Person who was a Member at any time during such Fiscal Year, all information (including IRS Schedule K-1) necessary for the preparation of such Person's federal and state income tax returns.

6.5. Partnership Status for Income Tax Purposes. The Members intend that the Company shall be treated as a partnership for federal, state and local income tax purposes, and the Company shall not elect, and the Board shall not permit the Company to elect, to be treated as an association taxable as a corporation for federal, state or local income tax purposes under Regulations Section 301.7701-3 or under any corresponding provision of state or local law. Each Member and the Company shall file all tax returns consistent with such treatment. This characterization, solely for such tax purposes, does not create or imply a general partnership among the Members for state law or any other purpose.

6.6. Tax Elections. Subject to Section 6.5, the Company shall, to the extent permitted by applicable law, elect or otherwise take such tax positions as the Board, in its discretion, determines. In addition, at the discretion of the Board, the Company shall make an election pursuant to Code Section 754 to (or to the extent required by applicable Law shall) adjust the basis of the Company's property in the manner provided in Code Sections 734(b) and 743(b).

6.7. Bank Accounts. All funds of the Company are to be deposited in the Company's name in such bank account or accounts as may be designated by the Board and shall be withdrawn on the signature of such Person or Persons as the Board may authorize.

Section 7. Management and Operations

7.1. Management Board

(a) A board of managers of the Company (the "Board") is hereby established and shall be comprised of natural Persons (each such Person, a "Manager") who shall be appointed in accordance with the provisions of Section 7.1(b). Subject to the terms of this Agreement, including, without limitation, the Investor Consent Rights, the business and affairs of the Company shall be managed, operated and controlled by or under the direction of the Board, and the Board shall have, and is hereby granted, the full and complete power, authority and discretion for, on behalf of and in the name of the Company, to take such actions as it may in its sole discretion deem necessary or advisable to carry out any and all of the objectives and purposes of the Company, subject only to the terms of this Agreement.

(b) The Company and the Members shall take such actions as may be required to ensure that the number of managers constituting the Board is at all times three (3). The Board shall be comprised as follows:

(i) One (1) individual designated by Investor (the "Investor Manager"), who shall initially be Stefanos Economou; and

(ii) Two (2) individuals designated by Calderwood (the "Calderwood Managers"), who shall initially be Alex Calderwood and Kelly Sawdon.

(c) The provisions of this Agreement regarding the management and governance of the Company shall, to the fullest extent legally permissible, apply as well to the management and governance of the Subsidiaries, whether such Subsidiaries are managed or controlled directly or indirectly by the Company as a member, manager, partner, stockholder or otherwise. Any action to be taken by any Subsidiary shall be construed as an action taken by the Company and shall be subject to the same rights and limitations granted and imposed on the Members under this Agreement. In furtherance of the foregoing, each Member shall take, and each of its respective Managers shall agree to take, to the fullest extent legally permissible, all actions necessary and appropriate to ensure that at all times, the constituents (and their respective relative powers) of the management board, board of directors (or similar governing body) of each of the Subsidiaries and committees thereof, if any, are the same as those of the constituents of the Board. The Members agree that the manner in which to best replicate the representation of the Board (and the respective relative powers of its constituents) on the boards of directors (or similar governing bodies) of the Subsidiaries as set forth in the immediately preceding sentence, shall be subject to agreement of the Board. The Company and each Member shall take, and shall cause each of its respective Managers to take, all actions necessary and appropriate to ensure that any direct or indirect Subsidiary and any directors or officers of any Subsidiary act, to the fullest extent legally permissible, in a manner consistent with the terms and conditions of this Agreement.

(d) Each Manager shall hold office until his or her death, resignation or removal at the pleasure of the Member that appointed him or her. If a vacancy occurs on the Board, the Person with the right to appoint and remove such vacating Manager shall appoint his or her successor. A Member shall lose its right to have Managers serve on the Board, and its designated Managers on the Board shall be deemed to be automatically removed, as of the

date on which such Member ceases to be a Member or as otherwise provided in this Agreement. From and after the date on which a Member shall lose its right to have Managers serve on the Board, all of the provisions of this Agreement referring to Managers and the Board shall be read as if such Member's Managers do not exist and all quorum requirements and decisions of the Board shall be satisfied and made, as applicable, solely by the Managers designated by the Member whose Managers still serve on the Board.

(e) Unless otherwise agreed in writing by Investor and Calderwood, a Manager, in his or her capacity as such, is not entitled to receive any compensation for such Manager's services on the Board, except as otherwise determined by unanimous vote of the Members.

7.2. Meetings.

(a) The Board shall meet once every Fiscal Quarter (unless waived by mutual agreement of the Members) and at such other times as may be necessary for the conduct of the Company's business, in each case, on at least five (5) Business Days prior written notice of the time, place and agenda of such meeting given by any Manager to all of the other Managers. Managers may waive in writing the requirements for notice before, at or after a special meeting, and attendance at such a meeting without objection by a Manager shall be deemed a waiver of such notice requirement.

(b) Any meeting of the Board may be held by conference telephone call, video conference or through similar communications equipment by means of which all Persons participating in the meeting can communicate with each other. Participation in a telephonic and/or video conference meeting held pursuant to this Section shall constitute presence in person at such meeting.

(c) Subject to the Investor Consent Rights, (i) a majority of the Managers serving on the Board shall constitute a quorum for the transaction of business of the Board, (ii) at all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting and (iii) if a quorum shall not be present at any meeting of the Board, then the Managers present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

(d) Subject to the Investor Consent Rights, any action required or permitted to be taken at a meeting of the Board may be taken without a meeting, without prior notice and without a vote only if a unanimous consent in writing, setting forth the action so taken, shall be signed by all of the Managers. All consents shall be filed with the minutes of the proceedings of the Board.

7.3. Board Action. Each Manager shall have one vote on all matters submitted to the Board. With respect to any matter before the Board, the act of a majority of the Managers constituting a quorum shall be the act of the Board; provided, however, that, for so long as the Investor or one or more of its Affiliates is a Member of the Company, (i) the Board shall not consider or vote upon any of the matters set forth in Exhibit E hereto ("Major Decisions") unless the Investor Manager is present at such Board meeting, and (ii) no act shall be taken, sum

expended, decision made or obligation incurred by the Company (and the Company shall not permit any act to be taken, sum expended, decision made or obligation incurred by any Subsidiary) with respect to any Major Decisions without the approval of the Investor Manager, which may be withheld in its sole discretion (the rights set forth in this proviso, the "Investor Consent Rights").

7.4. Modern Housing Voting Agreement. As long as the Investor or one or more of its Affiliates holds an ownership interest in the Company, Calderwood, in his capacity as a member of Modern Housing, will vote, or cause to be voted, all membership interests owned by Calderwood, or over which Calderwood has voting control, from time to time and at all times, at any annual or special meeting or in any written consent taken in lieu thereof, consistent and in agreement with the vote of the Company on all matters submitted to the members of Modern Housing for approval.

7.5. Officers of the Company. Subject to the Investor Consent Rights, (i) the Board shall have the right, at any time, to appoint individuals to serve as officers of the Company, which individuals shall hold such office until his or her successor is appointed by the Board, or until such officer's sooner death, resignation or removal by the Board (the "Officers"); (ii) the Officers shall perform such duties and possess such powers as contemplated by this Agreement and as the Board may from time to time prescribe; (iii) the Board may authorize the Company to enter into employment agreements with such Officers; and (iv) the Board may reduce, eliminate or modify such authority granted to such Officers or to relieve such Officers of such authority and exercise such authority itself or assist or grant such authority to another Officer.

7.6. Annual Business Plan.

(a) No later than thirty (30) days prior to the end of the then current Fiscal Year, Calderwood shall prepare (or cause to be prepared) and shall deliver to the Board for approval the Annual Business Plan for the next Fiscal Year. If Calderwood fails to deliver the initial or revised drafts of the Annual Business Plan within such time frame or if the revised draft is unacceptable to the Board, then the Board shall have the right to prepare the draft Annual Business Plan. The Annual Business Plan shall be updated on an annual basis or at such other times as may be determined by the Board. Each Annual Business Plan shall include the "Annual Business Plan Information" set forth in Exhibit F attached hereto. Promptly following the Effective Date, the Investor and Calderwood shall agree upon an initial business plan for the four month period ending December 31, 2011 (the "Initial Business Plan"). The Initial Business Plan and any other annual business plan approved by the Board is referred to herein as the "Annual Business Plan". Every Annual Business Plan shall require approval of the Board (including the approval of the Investor Manager). If the Board does not approve the Annual Business Plan by the beginning of any Fiscal Year, the prior year's Annual Business Plan shall continue in effect, but with a five percent (5%) increase on all budgeted amounts.

(b) Calderwood shall, subject to the limitations contained herein, the availability of Cash Flow and any other matters outside of the reasonable control of Calderwood, implement and shall not vary or modify the then applicable Annual Business Plan in an amount to exceed in the aggregate $500,000 without the approval of the Board

(including the approval of the Investor Manager). Calderwood shall promptly advise and inform Investor of any transaction, notice, event or proposal directly relating to the management and operation the Company or any Subsidiary which does or is likely to significantly affect, either adversely or favorably, the Business or cause a significant deviation from the Annual Business Plan. Nothing contained herein shall in any way diminish the obligations or duties of Calderwood hereunder.

7.7. Affiliate Transactions.

(a) Calderwood covenants and agrees to promptly disclose, in a reasonably detailed writing, to the Company and Investor, if at any time Calderwood or any of its Affiliates, directly or indirectly, either alone or in partnership or jointly or in conjunction with any Person or Persons, as principal, agent, employee, director, shareholder, partner, member, manager or in any other manner whatsoever, (i) owns, manages, operates, finances or otherwise becomes associated with or provides assistance to the Company or any direct or indirect Subsidiary, (ii) directs or attempts to direct any applicable business from the Company or any direct or indirect Subsidiary or engages in any act which causes or is likely to cause any present or future customer or supplier of the Company or any direct or indirect Subsidiary to discontinue or curtail its applicable business with the Company or any direct or indirect Subsidiary or to conduct such applicable business with another competing Person or (iii) is involved in negotiations that may lead to any of the matters described in clauses (i) or (ii) above.

(b) No agreement or transaction shall be entered into by the Company or any Subsidiary with Calderwood or any Affiliate of Calderwood and no decision shall be made in respect of any such agreement or transaction (including, without limitation, the entering into, amendment, enforcement or termination thereof) or any other matter relating to any dealings between the Company or any Subsidiary and Calderwood or its Affiliate unless such agreement, transaction or decision shall have been approved in writing by Investor.

(c) The Members hereby approve and ratify the execution and delivery by the Company of the Calderwood Employment Agreement on the Effective Date. Notwithstanding anything herein to the contrary, the Members hereby agree that any decision to terminate the Calderwood Employment Agreement or enforce the Company's rights and/or Calderwood's obligations thereunder (including the decision to declare a breach or default under the Employment Agreement pursuant to the terms and conditions thereof) (such actions collectively, "Calderwood Employment Agreement Claims") shall require the approval in writing by the Board and be subject to the Investor Consent Rights; provided, however, that in the event of a deadlock on the Board with respect to any Calderwood Employment Agreement Claim which cannot be resolved through good faith discussions among the Managers within fifteen (15) days following the date on which such matter has been submitted to a vote of the Board, Calderwood consents and agrees that the Investor Manager, acting on behalf of the Company, may submit the merits of the Calderwood Employment Agreement Claim for judicial determination pursuant to Section 12.2 hereof.

7.8. Insurance. During the term of this Agreement, the Company or its applicable Subsidiary shall procure and maintain insurance as is determined to be appropriate by Investor and Calderwood (in form and with endorsements, waivers and deductibles and with

insurance companies, designated or approved by Investor) naming the Company, the applicable Subsidiary, Investor and Calderwood as insureds thereunder.

7.9. Restrictive Covenants. Each of Calderwood and Investor acknowledges that he/it is and will become familiar with the Company's and its Subsidiaries' and Affiliates' trade secrets and with other confidential and proprietary information concerning the Company and its Subsidiaries and Affiliates. Calderwood further acknowledges that his services are of special, unique and extraordinary value to the Company and its Subsidiaries. Therefore, the Company, Calderwood and the Investor mutually agree that it is in their interest for the Parties to enter into the restrictive covenants set forth in this Section 7.9 and that such restrictions and covenants are reasonable given the nature of the duties of Calderwood and the nature of the Company's and its Subsidiaries' businesses.

(a) Non-Competition. During the Restricted Period, neither Calderwood nor Investor shall, directly or indirectly, (i) acquire or own in any manner any interest (whether through an equity or debt instrument) in any Person which engages or plans to engage in any business of the type and character engaged in, or competitive with, that conducted by the Company and its Subsidiaries (to be determined as of the date of any challenged activity of Calderwood or the Investor, as the case may be) (a "Competing Business") or (ii) manage, be employed by or serve as an employee, agent, officer or director of, or consultant to, any Person which engages in or plans to engage in a Competing Business; provided, however, that Calderwood may acquire, solely as passive investments in which Calderwood takes no active management role, minority equity interests in businesses which develop hotels each of which individually has fewer than sixty (60) rooms (the investments contemplated by this clause (y), "Small Hotel Projects"); provided further, that if Calderwood is presented with the opportunity to invest in a Small Hotel Project, Calderwood shall (A) notify the Investor in writing of such opportunity promptly (but in any event within five (5) Business Days) following Calderwood's receipt of a written proposal with respect to such Small Hotel Project, (B) provide the Investor with a right to invest alongside Calderwood in such Small Hotel Project on no less favorable terms than those otherwise available to any other potential investors for the Small Hotel Project, (C) afford the Investor a reasonable time period (not to be less than thirty (30) days) within which to evaluate the proposed terms and conditions of the Small Hotel Project and conduct a due diligence investigation in connection therewith. The Parties agree and acknowledge that (i) Calderwood is a direct or indirect equity owner of Rudy's Barbershop, L.L.C. ("Rudy's Barbershop"), which is in the hair care and salon business, and each of Neverstop, Inc., Neverstop Holdings, LLC, Neverstop Events, LLC, Neverstop Music, LLC and Neverstop Developments, LLC (collectively referred to as "Neverstop"), which are in the promotions and event planning business and (ii) as of the Effective Date, Rudy's Barbershop and Neverstop do not compete with the business of the Company as currently conducted, and (iii) subject in all respects to Calderwood's continuing compliance with Section 7.11(a) of this Agreement and the Calderwood Employment Agreement from and after the date hereof, Calderwood's equity and management participation in Rudy's Barbershop and Neverstop shall not constitute a breach of this Section 7.9(a); provided, that if, following the Effective Date, the Investor notifies Calderwood in writing that Investor has determined, in its reasonable

discretion, that either Rudy's Barbershop or Neverstop has become engaged in a Competing Business, Calderwood shall have six (6) months after receipt of such notice to cause Rudy's Barbershop or Neverstop, as the case may be, to cease engaging in such Competing Business and if after such cure period Investor determines in Investor's reasonable discretion that Rudy's Barbershop or Neverstop continues to conduct such Competing Business, Calderwood shall divest himself of such equity interest in Rudy's Barbershop and/or Neverstop, as the case may be, but only as to the entity engaging in such Competing Business, and terminate any management, service or consulting relationship he may have with such entity; provided further, that, notwithstanding the foregoing, Calderwood shall not be entitled to the six month cure period referenced in the immediately preceding proviso if the Investor had previously delivered to Calderwood a notice of breach with respect to either Rudy's Barbershop or Neverstop and shall immediately divest himself of such equity interests in Rudy's Barbershop and/or Neverstop, as the case may be.

(b) Non-Solicitation; Interference.

(i) During the Restricted Period, neither Calderwood nor Investor shall, directly or indirectly, (A) employ, solicit for employment or otherwise contract for the services of any individual who is or was an employee of the Company or any of its Subsidiaries or (B) otherwise induce or attempt to induce any employee of the Company, any Subsidiary or Investor or any of its Affiliates to leave the employ of any of the foregoing, or in any way knowingly interfere with the relationship between the Company or any Subsidiary and any employee respectively thereof.

(ii) During the Restricted Period, neither Calderwood nor Investor shall (A) solicit or attempt to solicit any individuals or entities that were clients, customers, suppliers, licensees, business relations of, lenders to, or investors in the Company or any Subsidiary to cease doing business with the Company or any Subsidiary, or (B) interfere in any way with the relationship between the Company or any Subsidiary and any individual or entity that is or was one of their respective clients, customers, suppliers, licensees, business relations , lenders or investors.

(c) Enforcement. Each of Calderwood and Investor acknowledges that a breach of the covenants contained in this Section 7.9 and Section 7.10 may cause irreparable damage to the Company, the Subsidiaries and their Affiliates, the exact amount of which would be difficult to ascertain, and that the remedies at Law for any such breach or threatened breach would be inadequate. Accordingly, each of Calderwood and Investor agrees that if such Member breaches or threatens to breach any of the covenants contained in this Section 7.9 and Section 7.10, in addition to any other remedy which may be available at Law or in equity, the Company, its Subsidiaries and the non-breaching Member shall be entitled to specific performance and injunctive relief to prevent the breach or any threatened breach thereof without bond or other security or a showing that monetary damages will not provide an adequate remedy.

(d) Scope of Covenants. Each of Calderwood and Investor further acknowledges that the time, scope and other provisions of this Section 7.9 have been

specifically negotiated by sophisticated commercial parties and agree that they consider the restrictions and covenants contained in this Section 7.9 to be reasonable and necessary for the protection of the interests of the Company, the Subsidiaries and their Affiliates, but if any such restriction or covenant shall be held by any court of competent jurisdiction to be void but would be valid if deleted in part or reduced in application, such restriction or covenant shall apply with such deletion or modification as may be necessary to make it valid and enforceable. The restrictions and covenants contained in each paragraph of this Section 7.9 shall be construed as separate and individual restrictions and covenants and shall each be capable of being severed without prejudice to the other restrictions and covenants or to the remaining provisions of this Agreement.

7.10. Confidentiality.

(a) Any information relating to the business, operation or finances of a Member or the Company which are proprietary to such Member or the Company is hereinafter referred to as "Confidential Information". All information in tangible form (plans, writings (including, without limitation, customer lists and marketing materials), drawings, computer software and programs, etc. (including copies and tangible embodiments thereof, in whatever form or medium, including electronic media)) or provided to or conveyed orally or visually to a receiving Member (including, without limitation, any marketing techniques), shall be presumed to be Confidential Information at the time of delivery to the receiving Member. Each Member agrees: (i) not to disclose such Confidential Information to any Person except to those of its employees or Managers who need to know such Confidential Information in connection with the conduct of the business of the Company and who have agreed to maintain the confidentiality of such Confidential Information and (ii) neither it nor any of its employees or Managers will use the Confidential Information for any purpose other than in connection with the conduct of the business of the Company; provided that nothing herein shall prevent any Member from disclosing any portion of such Confidential Information (A) to the Company and allowing the Company to use such Confidential Information in connection with the Company's business, (B) pursuant to an Order or in response to a governmental inquiry, by subpoena or other legal process, but only to the extent required by such Order, inquiry, subpoena or process, and only after reasonable notice to the original divulging Member, (C) as necessary or appropriate in connection with, or to prevent the audit by, a Governmental Authority of the accounts of any of the Members, provided notice of such disclosure is first given to the original divulging Member prior to such disclosure, (D) in order to initiate, defend or otherwise pursue legal proceedings between or among the Parties regarding this Agreement, (E) as necessary in connection with a Transfer of an Interest permitted hereunder, provided the recipient agrees to maintain the confidentiality of such Confidential Information, (F) to a Member's respective attorneys or accountants, (G) as, and solely to the extent, required by applicable Laws, provided notice of such disclosure is first given to the original divulging Member prior to such disclosure, or (H) to any existing and prospective, direct or indirect, investors, lenders and other capital sources of a Member, provided the recipient agrees to maintain the confidentiality of such Confidential Information. Confidential Information shall not include information (1) which is or hereafter becomes public, other than by breach of this Agreement, (2) which was already in the receiving Member's possession prior to any disclosure of the Confidential Information to the receiving Member by the divulging Member, or (3) which has been or is hereafter obtained by the

receiving Member from a third party not bound by any confidentiality obligation with respect to the Confidential Information.

(b) All Confidential Information shall be protected by the receiving Member and the Company from disclosure with the same degree of care with which the receiving Member protects its own Confidential Information from disclosure. The Company, the Members and their Affiliates shall each act to safeguard the secrecy and confidentiality of, and any proprietary rights to, the Confidential Information of the Company and the Members, except to the extent such information may be disclosed pursuant to Section 7.10(a) above. Each Member and the Company may, from time to time, provide the other Members written notice of any Confidential Information which is subject to this Section.

(c) References in this Section 7.10 to the Company shall include any Subsidiary of the Company.

7.11. Corporate Opportunities.

(a) Time Devoted to Company. Calderwood shall devote substantially all of his business time and attention to the conduct of the Company's business and affairs and will direct and supervise the Company's day-to-day business and operations in a prudent and commercially reasonable manner to maximize the returns to the Company. Notwithstanding the foregoing, the Parties agree that Calderwood may participate in the management of and maintain the equity investments he has in Rudy's Barbershop and Neverstop as those investments exist on the Effective Date so long as (i) the businesses conducted by Rudy's Barbershop and Neverstop do not compete with the Company and its Subsidiaries after the Effective Date and (ii) Calderwood's commitment of time to Rudy's Barbershop and Neverstop does not adversely impact the degree of care, skill, diligence, quality and level of performance of services provided by Calderwood to the Company pursuant to this Agreement and the Calderwood Employment Agreement.

(b) Corporate Opportunity Procedures.

(i) Without limiting any of Calderwood's obligations or rights hereunder, if, during the Restricted Period, Calderwood shall identify any opportunities or potential investments related to the Business, the ACE brand and/or any other retail operation or venture that the Investor reasonably would believe the Company or its Subsidiaries might be interested in pursuing based on Investor's prior discussions with Calderwood (each, an "Opportunity"), Calderwood shall promptly present such Opportunity to the Board by submission of a written description (the "Company Opportunity Notice") of the Opportunity. The Company Opportunity Notice shall include the location, description, status and source of the Opportunity as well as all material commercial details and other information relating to the Opportunity, including the proposed terms and conditions thereof, known to Calderwood and attach copies of any documentation relating thereto provided to Calderwood.

(ii) Following receipt of the Corporate Opportunity Notice, the Board will have twenty (20) Business Days (the "Decision Period") to decide whether the Company

will pursue such Opportunity. If by the end of the Decision Period, the Investor Manager votes against pursuing such Opportunity, the Company will be deemed to have elected not to pursue such Opportunity and Calderwood shall be free to pursue such opportunity independently, provided, that Calderwood shall not pursue any Opportunity that he is otherwise entitled to pursue hereunder if the (i) the Opportunity would constitute a Competing Business or otherwise result in a violation by Calderwood of Section 7.9(a) hereof, unless otherwise approved by the Investor in writing or (ii) pursuit and/or investment in such Opportunity could cause, or could reasonably be expected to cause, Calderwood to fail or be unable to perform or diminish his ability to perform any of his obligations and duties described in Section 7.11(a) or elsewhere in this Agreement or the Calderwood Employment Agreement.

(iii) If the Board elects to pursue such Opportunity, the Company or applicable Subsidiary shall perform (or cause to be performed) due diligence in order to finalize closing of the transaction. Neither the Company nor any Subsidiary shall be obligated to close on any Opportunity if the Investor does not agree in writing to close on such Opportunity (whether as a result of Investor's dissatisfaction with the results of the due diligence conducted with respect to such Opportunity or otherwise).

(c) Right of First Refusal With Respect to Real Estate Opportunities. If either Calderwood or the Company identifies business opportunities in which the owners of real property are willing to sell or enter into a lease for such property or any improvements thereto (a "Real Estate Opportunity"), then prior to presenting the Real Estate Opportunity to any Persons for consideration, Calderwood shall first, promptly after learning of such Real Estate Opportunity, present the Real Estate Opportunity to the Investor for consideration by delivering a written summary identifying the relevant parties, location, pricing and other material terms and conditions of such Real Estate Opportunity (a "Real Estate Opportunity Notice"). The Investor shall have twenty (20) Business Days following its receipt of such Real Estate Opportunity Notice (the "Evaluation Period") to determine whether or not the Investor wishes to participate in such Real Estate Opportunity. If, during the Evaluation Period, the Investor elects not to participate in such Real Estate Opportunity, or does not make any election prior to the expiration of such Evaluation Period, then Calderwood shall be free to present the opportunity to other Persons.

## Section 8. Representations and Warranties.

8.1. Representations and Warranties of the Members. Each Member hereby represents and warrants to the other Member as of the Effective Date as follows:

(a) Due Incorporation or Formation; Authorization of Agreement. If such Member is not a natural person, such Member is a corporation duly organized or a partnership or limited liability company duly formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has the corporate, partnership or company power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby. Such Member has the requisite power and authority and has taken all actions necessary to execute and deliver this Agreement and consummate the

transactions contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of such Member.

(b) No Conflict with Restrictions; No Default. Neither the execution, delivery or performance of this Agreement nor the consummation by such Member of the transactions contemplated hereby (i) will conflict with, violate or result in a breach of (or has conflicted with, violated or resulted in a breach of) any of the terms, conditions or provisions of any Law or Order of any court, any Governmental Authority applicable to such Member or any of its Affiliates, (ii) will conflict with, violate, result in a breach of or constitute a default under (or has conflicted with, violated, resulted in a breach of or constituted a default under) any of the terms, conditions or provisions of the articles of incorporation, bylaws, partnership agreement or operating agreement of such Member or any of its Affiliates or of any material agreement or instrument to which such Member or any of its Affiliates is a party or by which such Member or any of its Affiliates is or may be bound or to which any of its properties or assets is subject, (iii) will conflict, violate, result in (or has conflicted with, violated or resulted in) a breach of, constitute (or has constituted) a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of (or has accelerated) the performance required by, give (or has given) to others any material interests or rights or require any consent, authorization or approval under any indenture, mortgage, lease, agreement or instrument to which such Member or any of its Affiliates is a party or by which such Member or any of its Affiliates or any of their properties or assets is or may be bound or (iv) will result (or has resulted) in the creation or imposition of any Lien upon any of the properties or assets of such Member or any of its Affiliates.

(c) Authorizations. Except as set forth in Schedule 8.1(c), any registration, declaration or filing with, or consent, approval, license, permit or other authorization or Order by, or exemption or other action of, any Governmental Authority or any other Person that was or is required in connection with the valid execution, delivery, acceptance and performance by such Member under this Agreement or consummation by such Member (or any of its Affiliates) of any transaction contemplated hereby has been completed, made or obtained on or before the date hereof.

(d) Litigation. Except as set forth in Schedule 8.1(d), there are no actions, suits, proceedings or investigations pending, or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting such Member or any of its Affiliates or any of their properties, assets or businesses in any court or before or by any Governmental Authority which, if adversely determined (or, in the case of an investigation could lead to any action, suit or proceeding which if adversely determined) could reasonably be expected to materially impair such Member's ability to perform its obligations under this Agreement; such Member or any of its Affiliates has not received any currently effective notice of any default, and such Member or any of its Affiliates is not in default, under any applicable Order of any Governmental Authority which could reasonably be expected to materially impair such Member's (or any of its Affiliate's) ability to perform its obligations under this Agreement.

(e) Investigation. Such Member is acquiring its Interest based upon its own investigation, and the exercise by such Member of its rights and the performance of its obligations under this Agreement will be based upon its own investigation, analysis and

expertise. Such Member is a sophisticated investor possessing an expertise in analyzing the benefits and risks associated with acquiring investments that are similar to the acquisition of its Interest.

(f) Securities Matters.

(i) None of the Interests are registered under the Securities Act or any state securities Laws. Such Member understands that the offering, issuance and sale of the Interests are intended to be exempt from registration under the Securities Act, based, in part, upon the representations, warranties and agreements contained in this Agreement. Such Member is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act.

(ii) Neither the Securities and Exchange Commission nor any state securities commission has approved the Interests or passed upon or endorsed the merits of the offer or sale of the Interests. Such Member is acquiring the Interests solely for such Member's own account for investment and not with a view to resale or distribution thereof in violation of the Securities Act.

(iii) Such Member is unaware of, and in no way relying on, any form of general solicitation or general advertising in connection with the offer and sale of the Interests.

(g) Members Funds. Such Member has taken such measures as are required by Law to assure that the funds invested in the Company and/or used to make payments in connection with the Company or any Subsidiary are derived (A) from transactions that do not violate U.S. Law nor, to the extent such funds originate outside the United States, do not violate the Laws of the jurisdiction in which they originated; and (B) from permissible sources under U.S. Law or to the extent such funds originate outside the United States, under the Laws of the jurisdiction in which they originated.

Except as set forth in this Section 8.1, the Investor makes no other representations or warranties.

8.2. Representations and Warranties of Calderwood. Calderwood hereby represents and warrants to Investor as of the Effective Date as follows:

(a) Capitalization; Ownership.

(i) Schedule 8.2(a)(i) sets forth for each Contributed Company, as of the points in time immediately prior to and following the Buyout Closing: (A) the percentage of membership interests authorized; (B) the percentage of membership interests outstanding; (C) and the owners of the outstanding membership interests (the "Contributed Company Interests").

(ii) The Contributed Company Interests constitute all of the issued and outstanding equity interests of the Contributed Companies. Except for the Contributed Company Interests, no membership interests, shares of capital stock or other equity

interests of the Contributed Companies are issued, reserved for issuance or outstanding. The Contributed Company Interests have been duly authorized and validly issued and are fully paid and nonassessable. None of the Contributed Companies is a party to any outstanding or authorized option, warrant, right (including any preemptive right), subscription, claim of any character, agreement, obligation, convertible or exchangeable securities, or other commitments contingent or otherwise, relating to the capital stock or other equity interest in such Contributed Company, pursuant to which such Contributed Company is or may become obligated to issue, deliver or sell or cause to be issued, delivered or sold, shares of capital stock of or other equity or voting interests in, such Contributed Company or any securities convertible into, exchangeable for, or evidencing the right to subscribe for or acquire, any shares of the capital stock of or other equity or voting interests in such Contributed Company. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the capital stock of, or other equity or voting interests in, any of the Contributed Companies. None of the Contributed Companies has any authorized or outstanding bonds, debentures, notes or other Indebtedness, the holders of which have the right to vote (or convertible into, exchangeable for, or evidencing the right to subscribe for or acquire securities having the right to vote) with the members of such Contributed Company on any matter. There are no irrevocable proxies and no voting agreements with respect to any membership interests in, capital stock of, or other equity or voting interests in, any Contributed Company.

(iii) None of the Contributed Companies have any Subsidiaries or are parties to any joint venture agreements.

(iv) At the Buyout Closing, (A) the Existing Members will convey to the Company good and marketable title to the Buyout Interests, free and clear of all Liens, Orders or any other limitations whatsoever and (B) the assignments, endorsements, stock powers and other instruments of transfer delivered by the Existing Members to Company will be sufficient to transfer the Existing Members' entire interest, legal and beneficial, in the Buyout Interests to the Company. As of the execution and delivery of the Agreement, there are no unsatisfied conditions to the Buyout Closing other than the payment by the Company of the purchase price pursuant to the Buyout Agreement which is being funded contemporaneously herewith.

(v) Simultaneously with the execution and delivery of this Agreement, (A) Calderwood will convey to the Company good and marketable title to the Calderwood Contributed Interests, free and clear of all Liens, Orders or any other limitations whatsoever, and (B) the assignments, endorsements, stock powers and other instruments of transfer delivered by Calderwood to Company will be sufficient to transfer Calderwood's entire interest, legal and beneficial, in the Calderwood Contributed Interests to the Company.

(b) Due Formation; Authorization of Transaction Documents.

(i) Each Contributed Company is a limited liability company duly formed, validly existing and in good standing under the Laws of the jurisdiction of its

formation and has the company power and authority to own its property and carry on its business as owned and carried on at the Effective Date and as contemplated hereby. Calderwood has delivered to the Investor true and correct copies of each of the Contributed Companies organizational documents, as amended to date. Each Contributed Company is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition. Each Contributed Company has the company power and authority to execute and deliver the Transaction Documents to which it is a party and to perform its obligations thereunder, and the execution, delivery and performance of the Transaction Documents by each such Contributed Company has been duly authorized by all necessary company action. The Company and AGI Washington were formed solely for the purpose of engaging in the transactions contemplated by the Transaction Documents.

(ii) Except as set forth on Schedule 8.2(b)(ii), neither the Company nor AGI Washington has engaged in any business activities or conducted any operations, or incurred any Liabilities or other obligations of any nature, other than obligations pursuant to the Transaction Documents.

(c) No Conflict with Restrictions; No Default. Neither the execution, delivery or performance of the Transaction Documents nor the consummation of the transactions contemplated thereby (i) will conflict with, violate or result in a breach of (or has conflicted with, violated or resulted in a breach of) any of the terms, conditions or provisions of any Law or Order of any Governmental Authority, applicable to any Contributed Company or any member or Affiliate thereof, (ii) will conflict with, violate, result in a breach of or constitute a default under (or has conflicted with, violated, resulted in a breach of or constituted a default under) any of the terms, conditions or provisions of the certificate of formation, articles of incorporation, operating agreement, partnership agreement or bylaws of any of the Contributed Companies or any of their respective members and Affiliates or of any material agreement or instrument to which such Contributed Companies or any of their respective members and Affiliates is a party or by which such Contributed Companies or any of their respective members and Affiliates is or may be bound or to which any of their respective properties or assets is subject, (iii) will conflict with, violate, result in (or has conflicted with, violated or resulted in) a breach of, constitute (or has constituted) a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of (or has accelerated) the performance required by, give (or has given) to others any material interests or rights or require any consent, authorization or approval under any indenture, mortgage, lease, agreement or instrument to which any of the Contributed Companies or any of their respective members and Affiliates is a party or by which such Contributed Companies or their respective members and Affiliates or any of their properties or assets is or may be bound or (iv) will result (or has resulted) in the creation or imposition of any Lien upon any of the properties or assets of the Contributed Companies or any of their respective members and Affiliates.

(d) Authorizations. Except as set forth in Schedule 8.2(d), any registration, declaration or filing with, or consent, approval, license, permit or other authorization or Order by, or exemption or other action of, any Governmental Authority or any other Person, that was

or is required in connection with the valid execution, delivery, acceptance and performance by the Contributed Companies under the Transaction Documents and the consummation by the Contributed Companies and their respective members and Affiliates of the transactions contemplated thereby was completed, made or obtained prior to the Buyout Closing.

(e) Consents. No Contributed Company nor any member of a Contributed Company is required to submit any notice, report or other filing with any Governmental Authority in connection with the execution, delivery or performance by it of the Transaction Documents to which such Contributed Company and its members are a party, or the consummation of the transactions contemplated thereby, and no consent, approval or authorization of any Governmental Authority or any other Person is required to be obtained by any Contributed Company or any member thereof in connection with the execution, delivery and performance of any Transaction Document to which such Contributed Company or such member is a party, or the consummation of the transactions contemplated thereby.

(f) Financial Statements; No Undisclosed Liabilities.

(i) Calderwood has provided Investor with true and complete copies of the following financial statements for each of the Contributed Companies (collectively the "Financial Statements"): (A) the unaudited balance sheet and related statements of income as of and for the fiscal year ended December 31, 2010 (the "Balance Sheet Date") pertaining to Ace Hotel Palm Springs LLC and Ace Hotel New York LLC, Atelier Ace LLC, Ace Hotel Group LLC and Modern Housing; and (B) the unaudited balance sheet and related statements of income for Ace Hotel Palm Springs LLC, Ace Hotel New York LLC, Atelier Ace LLC, Ace Hotel Group LLC and Modern Housing as of and for the seven-months ended July 31, 2011.

(ii) Except as set forth in Schedule 8.2(f)(ii), the Financial Statements (x) are consistent with the information contained in the books and records of the Contributed Companies; (y) have been prepared in accordance with tax based accounting and the past practice of each of the Contributed Companies, consistently applied throughout the periods covered thereby; and (z) present fairly and accurately, in all material respects, the assets, liabilities and financial position of each of the Contributed Companies, as of the respective dates thereof and the results of operations and cash flows for the periods covered thereby. Except as set forth in Schedule 8.2(f)(ii), the Contributed Companies have not engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts or funds which have been and are reflected in the normally maintained Books and Records of the Contributed Companies. Except as set forth in Schedule 8.2(f)(ii), none of the Contributed Companies has any claims, obligations, Liabilities or Indebtedness, whether, primary or secondary, direct or indirect, absolute, accrued, contingent or otherwise, except for (i) claims, obligations, liabilities or Indebtedness set forth in the Financial Statements, and (ii) accounts payable to trade creditors and accrued expenses incurred subsequent to the Balance Sheet Date in the Ordinary Course of Business and that, individually and in the aggregate, are not material to the Contributed Companies.

(g) Litigation. Except as set forth on Schedule 8.2(g), there is no action, suit, proceeding at Law or in equity, or any arbitration or any administrative or other proceeding by, before or against any Governmental Authority or any other Person, pending, or, to the Knowledge of Calderwood, threatened, against or affecting the Business or any of the Contributed Companies, or any of their respective properties, assets or rights. Except as set forth in Schedule 8.2(g), to the Knowledge of Calderwood, there is no valid basis for any such action, proceeding or investigation. Neither Calderwood nor any of the Contributed Companies is subject to any Order. None of the actions, suits, proceedings or investigations set forth on Schedule 8.2(g), could reasonably be expected to have a Material Adverse Effect on the Company.

(h) Absence of Changes. During the period from the Balance Sheet Date to the Effective Date, there has not been a Material Adverse Effect, no fact, circumstance or event exists or has occurred which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect and none of the Contributed Companies has:

(i) incurred, assumed, guaranteed or modified any Indebtedness except as disclosed on Schedule 8.2(h)(i);

(ii) except as contemplated by the Transaction Documents, sold, leased, licensed, transferred, assigned, abandoned or permitted to lapse any material assets, tangible or intangible, other than in the Ordinary Course of Business;

(iii) except as contemplated by the Transaction Documents, issued, sold or transferred any of its membership interests, capital stock or other equity securities, securities convertible into its capital stock or other equity securities or warrants, options or other rights to acquire its equity interests or other equity securities, or any bonds or debt securities;

(iv) experienced any damage, destruction, or loss (whether or not covered by insurance) to any assets that exceed $50,000.00 in any one instance or canceled or waived any claims or rights of substantial value;

(v) changed any material accounting principles, methods or practices or made any change in its depreciation or amortization policies or rates, including, without limitation, any change in the application or interpretation of GAAP;

(vi) excepts as contemplated by the Transaction Documents, changed or amended its certificate of formation, articles or certificate of incorporation, bylaws, operating or partnership agreement or similar organizational documents;

(vii) mortgaged, pledged or suffered any other material Lien of any asset;

(viii) canceled, terminated, amended, modified or waived any material term of any Contract to which it is a party or by which it or any of its assets is or entered into any new material Contracts, except for Contracts entered into in the Ordinary Course of Business;

(ix) (A) increased the amount, or accelerated the vesting or payment of, compensation or benefits of whatever form, including, without limitation, commissions, payable or to become payable by it to any of its directors or officers, (B) increased the base compensation payable or to become payable to any employees of the Contributed Companies, except for normal periodic increases in such base compensation (not exceeding, in each case, five percent (5%)) in the Ordinary Course of Business, (C) increased the sales commission rate payable or to become payable to any employees of the Contributed Companies, (D) granted, made or accrued any loan, bonus, fee, incentive compensation (excluding sales commissions), service award or other like benefit granted, made or accrued, contingently or otherwise, to or for the benefit of any of the employees of the Contributed Companies, (E) adopted or amended any Company Plan or other Contributed Company employee welfare, pension, retirement, profit-sharing or similar payment or arrangement made or agreed to by it to any of the employees of the Contributed Companies, (F) entered into any new, or amended any existing, employment, consulting or similar agreement or caused or suffered any written or oral termination, cancellation or amendment thereof, (G) suffered any resignation of, or caused any termination of, any employees of the Contributed Companies or (H) granted, made or accrued any payment or distribution or other like benefit, contingent or otherwise, or otherwise transferred assets to any Affiliate of the Contributed Companies, including, but not limited to, any payment or principal of or interest on any debt owed to any such Affiliate;

(x) entered into any lease for real property or any lease for personal property or incurred any Liability therefor;

(xi) made any payments, engaged in any discount activity or given any other consideration to customers or suppliers, other than payments not exceeding $25,000.00 individually and $50,000.00 in the aggregate since the Balance Sheet Date and made under, and in accordance with the terms of, Contracts in effect on the date hereof;

(xii) failed to pay or satisfy when due any material Liability of the Contributed Companies;

(xiii) been a party to any transaction with any officer, director, or Affiliate of the Contributed Companies, including, without limitation, any Contract (i) providing for the furnishing of services by, (ii) providing for the lease or rental of real or personal property from or (iii) otherwise requiring payments to (other than dividends or distributions to any holder of Shares) any such person or any corporation, partnership, trust or other entity in which any such person has an interest as a holder of equity securities of the Contributed Companies, or as an officer, director, trustee or partner;

(xiv) entered into any (i) Contracts for the purchase of goods or services in excess of its normal operating inventories or at prices above customary prices or (ii) Contracts for the sale of goods or services in excess of $10,000.00 individually or $50,000.00 in the aggregate since the Balance Sheet Date or at prices or rates below customary prices or rates, in each case taking into account seasonal variability;

(xv) settled or compromised any material claim, suit, litigation, proceeding, dispute, arbitration, mediation, audit or investigation;

(xvi) made or rescinded any Tax election, changed any annual accounting period, adopted or changed any method of accounting or reversed any accruals (except as required by a change in Law or GAAP), filed any amended Tax Returns, signed or entered into any closing agreement or settlement, settled or compromised any claim or assessment of Tax Liability, surrendered any right to claim a refund, offset or other reduction in Liability, consented to any extension or waiver of the limitations period applicable to any claim or assessment except as disclosed on Schedule 8.2(h)(xvi), in each case with respect to Taxes, or acted or omitted to act where such action or omission to act could reasonably be expected to have the effect of increasing any present or future Tax liability or decreasing any present or future Tax benefit for the Company or any of its Subsidiaries; or

(xvii) agreed to enter or entered into any Contract to do any of the foregoing listed in subparagraphs (i) through (xvi) of this Section 8.2(h).

(i) Taxes. Except as set forth on Schedule 8.2(i):

(i) Each of the Contributed Companies have (A) timely filed (taking into account any applicable extensions) all Tax Returns required to be filed by it, and all such Tax Returns have been properly completed in compliance with all applicable Laws, and are true, correct and complete and (B) timely paid all Taxes shown to be due on any such Tax Return, and all other Taxes due and payable, except for Taxes which are not reasonably expected, individually or in the aggregate, to be material;

(ii) The Contributed Companies have established (or there has been established on their behalf) on the Balance Sheet reserves in accordance with their past practice that, as of the Balance Sheet Date, are adequate for the payment of all Taxes not yet due and payable. Since the Balance Sheet Date, none of the Contributed Companies have incurred any Liability for Taxes other than in the Ordinary Course of Business;

(iii) Each of the Contributed Companies has timely withheld and paid over to the appropriate Governmental Authority all Taxes which it is required to withhold from amounts paid or owing to any employee, shareholders, creditor, holder of securities or other third party, and each of the Contributed Companies has complied with all information reporting (including IRS Form 1099) and backup withholding requirements, including maintenance of required records with respect thereto;

(iv) There are no Liens relating or attributable to Taxes encumbering (and no Governmental Authority has threatened to encumber) the assets of any of the Contributed Companies, except for statutory Liens for current Taxes not yet due and payable;

(v) There are no: (i) pending or, to the Knowledge of Calderwood, threatened claims by any Governmental Authority with respect to Taxes relating or attributable to any of the Contributed Companies; or (ii) deficiencies for any Tax, claim

for additional Taxes, or other dispute or claim relating or attributable to any Tax liability of any of the Contributed Companies claimed, issued or raised by any Governmental Authority;

(vi) None of the Contributed Companies have not filed for an extension of time within which to file any Tax Return which extension is currently in effect. None of the Contributed Companies have waived any statute of limitations in respect of Taxes, or agreed to any extension of time with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired;

(vii) None of the Contributed Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period ending after the Effective Date as a result of any: (i) change in method of accounting for any period beginning on or prior to the Effective Date pursuant to Code Section 481 (or any similar provision of state, local or foreign Law); (ii) "closing agreement" as described in Code Section 7121 (or any similar provision of state, local or foreign Law) executed on or prior to the Effective Date; (iii) installment sale or open transaction disposition made on or prior to the Effective Date; (v) prepaid income received or accrued on or prior to the Effective Date; or (vi) method of accounting that defers the recognition of income to any period ending after the Effective Date;

(viii) None of the Contributed Companies (i) is a party to, is bound by, or has any obligation under, any Tax Sharing Agreement, or (ii) has any potential liability or obligation (for Taxes or otherwise) to any Person as a result of, or pursuant to, any such Tax Sharing Agreement;

(ix) None of the Contributed Companies (i) is a party to, is bound by, or has any obligation under, any closing or similar agreement, Tax abatement or similar agreement or any other agreements with any Governmental Authority with respect to any period for which the statute of limitations has not expired or (ii) has any potential liability or obligation (for Taxes or otherwise) to any Person as a result of, or pursuant to , any such agreement;

(x) No power of attorney that currently is in effect has been granted by any of the Contributed Companies;

(xi) None of the Contributed Companies has any liability for the Taxes of any Person under Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee, successor or as a result of similar liability, operation of Law, by contract (including any Tax Sharing Agreement) or otherwise;

(xii) None of the Contributed Companies has (i) taken a reporting position on a Tax Return that, if not sustained, could be reasonably likely to give rise to a penalty for substantial understatement of federal income Tax under Code Section 6662 (or any similar provision of state, local or foreign law), (ii) entered into any transaction identified as a (x) "listed transaction," within the meaning of Regulations Sections 1.6011-4(b)(2), (y) a "transaction of interest," within the meaning of Regulations Section

1.6011-3(b)(6), or (z) any transaction that is "substantially similar" (within the meaning of Regulations Section 1.6011-4(c)(4)) to a "listed transaction" or "transaction of interest," or (iii) entered into any other transaction that required or will require the filing of an IRS Form 8886; and

(xiii) None of the Contributed Companies has made an election pursuant to Regulations Section 301.7701-3 to be treated as a corporation for federal income tax purposes.

(j) Real Property; Environmental Matters.

(i) None of the Contributed Companies owns any real property. Schedule 8.2(j) contains an accurate and complete list and description of all leases of real property (collectively, the "Real Property Leases") to which the Company or any of the Company Subsidiaries is a party (as lessee, sublessee, sublessor or lessor). True and complete copies of such Real Property Leases have been made available to Investor. The Contributed Companies have valid leasehold interests in all leased real property described in each Real Property Lease, free and clear of any and all Liens, except for Permitted Liens. Each Real Property Lease is in full force and effect; all rents and additional rents due to date on each such Real Property Lease have been paid; in each case, the lessee has been in peaceable possession since the commencement of the original term of such Real Property Lease and is not in default thereunder and no waiver, indulgence or postponement of the lessee's obligations thereunder has been granted by the lessor; and there exists no default or event, occurrence, condition or act (including the transactions contemplated by this Agreement and the Transaction Documents) which, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under such Real Property Lease. None of the Contributed Companies has violated any of the terms or conditions under any such Real Property Lease in any material respect, and, to the Knowledge of Calderwood, all of the covenants to be performed by any other party under any such Real Property Lease have been fully performed.

(ii) To the Knowledge of Calderwood, each of the Contributed Companies have been and are in material compliance with all applicable Environmental Laws, and have obtained, and have been and are in compliance with, all Material Permits required of them under applicable Environmental Law. There are no claims, proceedings, investigations or actions by any Governmental Authority or other Person or entity pending, or to the Knowledge of Calderwood threatened, against any of the Contributed Companies under any Environmental Law. To the Knowledge of Calderwood, none of the Contributed Companies has assumed, either contractually or by operation of law, the Liability of any other Person under any Environmental Law. There are no facts, circumstances or conditions relating to the past or present business or operations of any of the Contributed Companies or any of their respective predecessors (including the disposal of any wastes, hazardous substances or other materials at any location), or to any real property or facility at any time owned, leased, or operated by any of the Contributed Companies or any of their respective predecessors, that could reasonably be expected to

give rise to any claim, proceeding or action, or to any Liability, under any Environmental Law.

(k) Intellectual Property.

(i) Schedule 8.2(k)(i) lists all registered Trademarks, pending Trademark applications, registered Copyrights, issued Patents and pending patent applications, and Domain Name registrations (collectively, "Registered Intellectual Property") and material unregistered trademarks and service marks, in each case that are (a) owned by the Contributed Companies or (b) being assigned to the Company by pursuant to the IP Assignments. With respect to each item of Registered Intellectual Property owned by a Contributed Company or being assigned to the Company by pursuant to the IP Assignments, (i) such Contributed Company or assignor is the sole owner and possesses all right, title, and interest in and to the item, free and clear of all Liens, and (ii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to Calderwood's Knowledge, is threatened that challenges the validity, enforceability, registration, ownership or use of the item. Schedule 8.2(k)(i) also sets forth all Intellectual Property licensed to the Contributed Companies by third parties that are used or held for use in the conduct of the Business.

(ii) Except as set forth in Schedule 8.2(k)(ii), the Contributed Companies own or have a valid right to use all Intellectual Property used by the Contributed Companies as used in the conduct of each Contributed Company's business. The execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby will not result in the loss, suspension, limitation, termination or other impairment of, or give rise to any right of any Person to suspend, limit, terminate or otherwise impair the right of the Contributed Companies or the Company to own or use or otherwise exercise any other rights that the Contributed Companies currently have with respect to, any Intellectual Property, nor require the consent of any Person in respect of any such Intellectual Property. The Intellectual Property owned by or licensed to the Contributed Company and the Intellectual Property being assigned to the Company pursuant to the IP Assignments is sufficient to conduct the Business of the Contributed Companies, and of the Company immediately following the Closing.

(iii) Except as set forth in Schedule 8.2(k)(iii), to the Knowledge of Calderwood, the Intellectual Property owned or used by the Contributed Companies and the Intellectual Property being assigned to the Company pursuant to the IP Assignments do not infringe, misappropriate, dilute or otherwise violate the Intellectual Property rights of any third party. Except as set forth in Schedule 8.2(k)(iii), there are no proceedings pending, and the Contributed Companies have not received any written complaint, claim, demand or notice, in each case, alleging that the Contributed Companies have infringed, misappropriated, diluted or otherwise violated the Intellectual Property rights of any third party. To the Knowledge of Calderwood, no Person is infringing, misappropriating, diluting or otherwise violating any Intellectual Property owned by the Contributed Companies or being assigned by to the Company pursuant to the IP Assignments. Except as set forth in Schedule 8.2(k)(iii), the Contributed Companies have not asserted or

threatened, any claim against any Person alleging any infringement, misappropriation or violation of any Intellectual Property owned by a Contributed Company or being assigned to the Company by pursuant to the IP Assignments.

(iv) The computers, software, servers, workstations, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment of the Contributed Companies (collectively, the "IT Assets") operate and perform in all material respects as required by the Company and have not materially malfunctioned or failed within the past three (3) years. The Contributed Companies have in place measures to protect the confidentiality, integrity and security of the IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption. The Contributed Companies have implemented data backup, data storage, system redundancy and disaster avoidance and recovery procedures, as well as a business continuity plan.

(l) Material Contracts.

(i) Schedule 8.2(l) lists each of the contracts, arrangements, programs and agreements currently in effect, whether oral or written ("Contracts"), of the following types to which any Contributed Company is a party as well as any Contracts relating to the Business to which Calderwood is a party either individually or through an Affiliate:

(A) Contracts (or groups of related Contracts) with the same party providing for the purchase of products or services by the Contributed Companies with respect to which the Contributed Companies have any Liability or obligation, involving more than $50,000.00;

(B) Contracts (or groups of related Contracts) that involve the payment after the date hereof by the Contributed Companies of more than $50,000.00;

(C) any partnership or joint venture Contract;

(D) any Contract relating to the development, ownership, licensing or use of any Intellectual Property, other than agreements for software commercially available on reasonable terms to the public generally with annual license, maintenance, support and other fees of less than $5,000.00;

(E) any Contract for the employment of any officer, employee or other Person on a full-time or consulting basis;

(F) any Contract related to Indebtedness;

(G) any Contract with any officer, director, or Affiliate of the Company;

(H) Contracts (or group of related Contracts) for the furnishing of goods or services by the Contributed Companies involving annual revenues of more than $50,000.00;

(I) Contracts (or group of related Contracts) pursuant to which the Contributed Companies have offered any rebates, discounts, incentives or volume purchase credits to any of its customers or to potential customers of more than $50,000.00;

(J) Contracts that purport to restrict the Contributed Companies' business activities or use of information in its business, including, without limitation, any covenant not to compete or restraint or limitation on the right to solicit customers or solicit or hire employees or to use the Ace brand name;

(K) Contracts (or group of related Contracts) with the United States, state or local government or any agency or department thereof;

(L) agreements relating to any securities of the Contributed Companies or rights in connection therewith;

(M) Contracts (or groups of related Contracts) relating to indemnification, whether the Contributed Companies are the beneficiary or obligor thereunder;

(N) without limiting the foregoing, all hotel management Contracts to which any Contributed Company is a party; and

(O) all other Contracts that involve the payment or receipt of consideration in excess of $50,000 at any one time or in the aggregate that are material to the Business taken as a whole.

(ii) Each Contract required to be set forth in Schedule 8.2(l) is in full force and effect and there exists no default or event of default or event, occurrence, condition or act (including the transactions contemplated by this Agreement and the Transaction Documents) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default or event of default thereunder with respect to any material term or provision of any such Contract. Neither Calderwood nor any of the Contributed Companies has violated any of the material terms or conditions of any contract or agreement required to be set forth in Schedule 8.2(l) and, to the Knowledge of Calderwood all of the covenants to be performed by any other party thereto have been fully performed in all material respects. Calderwood has delivered or made available to Investor true and complete copies, including all amendments, of each Contract set forth in Schedule 8.2(l).

(m) Employees; Employment Matters.

(i) Collective Bargaining Agreements. Except as set forth on Schedule 8.2(m), the Contributed Companies are not a party to or bound by any

collective bargaining agreement or other labor agreement. Except as set forth in Schedule 8.2(m), there are no pending or, to the Knowledge of Calderwood, threatened activities or proceedings of any labor union or other labor organization to organize any employees of the Contributed Companies or compel the Contributed Companies to bargain therewith. Except as set forth in Schedule 8.2(m), there is no pending or, to the Knowledge of Calderwood, threatened, and, for the past three years, has not been any, labor strike, dispute, work stoppage, slowdown or similar coordinated job action with respect to any employees of the Contributed Companies.

(ii) Compliance with Labor Laws. Except as set forth in Schedule 8.2(m)(ii), the Contributed Companies have complied in all material respects with all applicable Laws relating to labor and labor relations and employment and employment standards, including, without limitation, any provisions thereof relating to wages, hours, immigration control, employee classification, employee safety, termination pay, vacation pay, fringe benefits, employee benefits and the payment and/or accrual of the same and all insurance and all other costs and expenses applicable thereto.

(n) Employee Benefit Matters.

(i) Schedule 8.2(n) contains a complete and accurate list of all Company Plans. True, correct, and complete copies of all the following documents, in the Company's possession, with respect to the Company Plans, to the extent applicable, have been delivered to Investor:

(A) all documents constituting the Company Plans, including but not limited to, trust agreements, insurance policies, service agreements, and formal and informal amendments thereto;

(B) the most recently filed Forms 5500 or 5500C/R and any Financial Statements attached thereto;

(C) all IRS determination letters for the Company Plans;

(D) the most recent summary plan description and summaries of material modifications and any amendments or modifications thereof;

(E) all reports submitted within the preceding three years by third-party administrators, actuaries, investment managers, consultants, or other independent contractors;

(F) all notices that were issued within the preceding three years by the IRS, Department of Labor, or any other governmental entity with respect to the Company Plans;

(G) all memoranda, minutes, resolutions and similar documents describing the manner in which each Company Plan is or has been administered or describing corrections to the administration of an Company Plan; and

(H) all employee manuals or handbooks containing personnel or employee relations policies.

(ii) The plans marked on Schedule 8.2(n) as "Qualified Plans" are the only Company Plans that are intended to meet the requirements of Code Section 401(a) (a "Qualified Plan"). The plans marked on Schedule 8.2(n) as "ERISA Welfare Benefit Plans" are the only Company Plans or other plans or arrangements established or maintained by the Contributed Companies that are (or that have been at any time during the six (6) years immediately prior to the date hereof) "welfare benefit plans" within the meaning of Section 3(1) of ERISA (each, an "ERISA Welfare Benefit Plan").

(iii) The Contributed Companies have never maintained or contributed to any Qualified Plan other than those listed on Schedule 8.2(n). Each of the Qualified Plans has been determined by the IRS to be qualified under Code Section 401(a) and exempt from Tax under Code Section 501(a), and each such determination remains in effect and has not been revoked. To the Knowledge of Calderwood, nothing has occurred, or could reasonably be expected to occur, with respect to the design or operation of any Qualified Plan that could cause the loss of such qualification or exemption or the imposition of any Liability, Lien, penalty, or Tax under ERISA or the Code, and the Qualified Plans have been timely amended to comply with current Law.

(iv) The Contributed Companies do not sponsor, maintain or contribute to, and have never sponsored, maintained or contributed to, or had any Liability (whether contingent or otherwise) with respect to, any employee benefit plan subject to Section 302 of ERISA, Code Section 412 or Title IV of ERISA. None of the Company Plans is a multiemployer plan (as defined in Section 3(37) of ERISA). The Contributed Companies do not contribute to, and have never contributed to or had any other Liability (whether contingent or otherwise) with respect to, a multiemployer plan.

(v) The Contributed Companies have no Liability with respect to any benefit plan or arrangement other than the Company Plans. All Company Plans conform (and have at all times conformed) to the requirements of ERISA, the Code and all applicable Laws in all material respects. Each Company Plan has been maintained in all material respects in accordance with its terms with all applicable provisions of the Code, ERISA and other applicable Laws, including federal and state securities Laws; and all reporting, disclosure, and notice requirements of ERISA, the Code and other applicable Laws have been fully and completely satisfied with respect to each Company Plan.

(vi) With respect to each Company Plan, to the Knowledge of Calderwood, there has occurred no non-exempt "prohibited transaction" (within the meaning of Code Section 4975 or Section 406 of ERISA) or breach of any fiduciary duty described in Section 404 of ERISA that could result in any Liability, direct or indirect, for the Company or any stockholder, officer, director, or employee of the Company.

(vii) The Contributed Companies have paid all material amounts that the Contributed Companies are required to pay as contributions to the Company Plans; all benefits accrued under any funded or unfunded Company Plan will have been paid,

accrued, or otherwise adequately reserved in accordance with GAAP as of the Balance Sheet; and all monies withheld from employee paychecks with respect to Company Plans have been transferred to the appropriate Company Plan in a timely manner as required by applicable Law.

(viii) The Contributed Companies have not incurred any material Liability for any excise, income or other Taxes or penalties with respect to any Company Plan, and, to the Knowledge of Calderwood, no event has occurred and no circumstance exists or has existed that could give rise to any such material Liability. There are no pending or threatened actions, Liens, Lawsuits, complaints or claims by or on behalf of any Company Plans, or by or on behalf of any participants or beneficiaries of any Company Plans or other persons, alleging any breach of fiduciary duty on the part of the Contributed Companies or any of its officers, directors or employees under ERISA or any applicable Law, or claiming benefit payments other than those made in the ordinary operation of such plans, nor, to the Knowledge of Calderwood, is there any basis for any such claim. No Company Plan is presently under audit or examination (nor to the Knowledge of Calderwood, has notice been received of a potential audit or examination) by the IRS, the Department of Labor, or any other governmental entity, and no matters are pending, or, to the Knowledge of Calderwood, threatened, with respect to any Company Plan under any IRS program. Neither the Contributed Companies nor any plan administrator of any ERISA Welfare Benefit Plan has received any communication or correspondence from the Department of Labor or the IRS in respect of the failure to comply with the Form 5500 filing requirements, including, but not limited to, any notification in writing of any failure to file a timely annual report under Title I of ERISA or any Department of Labor Notice of Intent to Assess a Penalty.

(ix) No Company Plan would prohibit the transactions contemplated by this Agreement or by the Transaction Documents or would (A) give rise to any vesting of benefits, severance, termination, or other payments or liabilities (or increase the amount of or accelerate the payment of any of the foregoing) or (B) limit the ability of the Company to merge, amend or terminate any Company Plan, in connection with the execution and delivery of, shareholder approval of, or consummation of the transactions contemplated by, this Agreement or the Transaction Documents, either alone or in conjunction with any other event (whether contingent or otherwise). No payments or benefits under any Company Plan or other agreement of the Contributed Companies will be considered "excess parachute payments" under Code Section 280G. The Contributed Companies have not declared or paid any bonus or other compensation in contemplation of or in connection with the transactions contemplated by this Agreement.

(x) Except as set forth in Schedule 8.2(n)(x), the Contributed Companies have made no plan or commitment, whether or not legally binding, to create any additional Company Plan or to modify or change any existing Company Plan. No statement, either written or oral, has been made by the Contributed Companies to any person with regard to any Company Plan that was not in accordance with the Company Plan or that could have an adverse economic consequence to the Contributed Companies. All Company Plans may be amended or terminated without penalty by the Company at any time on or after the Closing.

(xi) To the Knowledge of Calderwood, with respect to any Company Plan that is an employee welfare benefit plan (within the meaning of Section 3(1) of ERISA), (A) each welfare plan for which contributions are claimed as deductions under any provision of the Code is in compliance with all applicable requirements pertaining to such deduction, (B) with respect to any welfare benefit fund (within the meaning of Code Section 419) related to a welfare plan, there is no disqualified benefit (within the meaning of Code Section 4976(b)) that would result in the imposition of a Tax under Code Section 4976(a), and (C) any Company Plan that is a group health plan (within the meaning of Code Section 4980B(g)(2)) complies, and in each and every case has complied, in all material respects with all of the requirements of Code Section 4980B, ERISA, Title XXII of the Public Health Service Act, the applicable provisions of the Social Security Act, the Health Insurance Portability and Accountability Act of 1996, and other applicable Laws. No Company Plan provides health or other benefits after an employee's or former employee's retirement or other termination of employment except as required by Code Section 4980B.

(xii) All persons classified by the Contributed Companies as independent contractors satisfy and have at all times satisfied the requirements of applicable Law to be so classified; the Company has fully and accurately reported their compensation on IRS Forms 1099 when required to do so; and the Company has no obligations to provide benefits with respect to such persons under Company Plans or otherwise. No individuals are currently providing, or have ever provided, services to the Contributed Companies pursuant to a leasing agreement or similar type of arrangement, nor have the Contributed Companies entered into any arrangement whereby services will be provided by such individuals.

(o) Licenses, Permits and Approvals.

(i) Schedule 8.2(o)(i) lists all of the material governmental and regulatory licenses, authorizations, franchises, certificates, permits and approvals (collectively, the "Material Permits") which constitute the only licenses, authorizations, franchises, certificates, permits, certifications and approvals required for the conduct of the business of the Contributed Companies as currently conducted.

(ii) Except as set forth in Schedule 8.2(o)(ii), the Contributed Companies possesses, maintain in full force and effect, and are in compliance in all material respects with the terms of the Material Permits.

(p) Insurance. Schedule 8.2(p) lists each insurance policy (including policies providing property, casualty, Liability, and workers' compensation coverage) maintained by the Contributed Companies. All such insurance policies are in full force and effect, and all premiums that are due and payable on such policies have been paid or accrued on the Financial Statements. Neither Calderwood nor any of the Contributed Companies has received any notice from on behalf of any insurance carrier issuing policies or binders relating to or covering the Business or any of the Contributed Companies that there will be a cancellation or non-renewal of any such policy or arrangement, or that alteration of any equipment or any improvements to real estate occupied by or leased to or by any of the Contributed Companies, purchase of additional

equipment, or material modification of any of the methods of doing business, will be required, nor has the termination of any such policies or arrangements been threatened. There exists no event, occurrence, condition or act (including the transactions contemplated by this Agreement and the Transaction Documents) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would entitle any insurer to terminate or cancel any such policies. Such policies, with respect to their amounts and types of coverage, are adequate to insure fully against risks to which the Contributed Companies and their property and assets are normally exposed in the operation of their respective businesses. Since the Balance Sheet Date, there has not been any material adverse change in Calderwood's or any Contributed Company's relationship with its insurers or in the premiums payable pursuant to such policies. Schedule 8.2(p) sets forth a list of all pending claims and the claims history of the Contributed Companies during the past three (3) years (including with respect to insurance obtained but not currently maintained).

(q) Transactions with Affiliates. Except as contemplated by the Transaction Documents or as set forth in Schedule 8.2(q), the Contributed Companies have not purchased, acquired or leased any property or services from, or sold, transferred or leased any property or services to, or loaned or advanced money to, or borrowed any money from, or entered into or been subject to any management, consulting or similar agreement with, or incurred Liabilities or other obligations of any nature whatsoever to, any of Calderwood, Barron, Herrick, Weigel, the Modern Housing Investor Group or any officer, director or other member of any Contributed Company or Affiliates of any of the foregoing. There are no restrictions, prohibitions or other covenants or provisions in any agreement relating to any entity (other than the Contributed Companies) in which Calderwood holds an equity interest (collectively, the "Calderwood Investment Entities"), including, without limitation, Rudy's Barbershop and Neverstop, which bind, or purport to bind, the Company or any of its Subsidiaries in any way or which would require Calderwood, the Company or any of its Subsidiaries to obtain the consent of, or provide notice to, such Calderwood Investment Entities or their any of respective managers, directors, members, partners or shareholders, with respect to any actions taken, or proposed to be taken, by the Company and/or its Subsidiaries.

(r) Compliance with Laws.

(i) Except as set forth in Schedule 8.2(r)(i), the Contributed Companies have not conducted and are not conducting their operations in violation of any Law or Order applicable to the Contributed Companies and the Business. Except as set forth in Schedule 8.2(r)(i), neither Calderwood nor any of the Contributed Companies has received any notice that any violation of the foregoing is being or may be alleged.

(ii) To Calderwood's Knowledge, no Governmental Authority has any intention to conduct any investigation, inquiry, audit or review related to the Business or any of the Contributed Companies.

(s) Books and Records. The respective minute books of the Contributed Companies, contain accurate records of the Contributed Companies. No Contributed Company has any of its records, systems, controls, data or information recorded, stored, maintained, operated or otherwise wholly or partly dependent on or held by any means (including any

electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of such Contributed Company.

(t) Title to Assets. Immediately following the Buyout Closing, the Company will own or have the exclusive right to use, in each case through its Subsidiaries, all of the properties and assets necessary for the conduct of the Business as it was conducted by the Contributed Companies immediately prior to the Buyout Closing. The Contributed Companies have good and marketable title or, in the case of leased assets, a valid leasehold interest, free and clear of all Liens, except for Permitted Liens, to all of the tangible and intangible personal property and assets reflected in the Financial Statements or thereafter acquired, except for properties and assets disposed of in the Ordinary Course of Business, consistent with past practice, since the Balance Sheet Date. All of the tangible personal property used in the Business by the Contributed Companies is in good operating condition and repair, ordinary wear and tear excepted, and is adequate and suitable for the purposes for which it is presently being used.

(u) Broker. Other than as set forth in Schedule 8.2(u), no agent, broker, Person or firm acting on behalf of Calderwood, any of the Contributed Companies or any of their respective Affiliates is or shall be entitled to any fee, commission or broker's or finder's fees in connection with this Agreement or any of the transactions contemplated.

(v) Disclosure. None of this Agreement, the Transaction Documents, the Financial Statements, any Schedule, Exhibit or certificate attached hereto or thereto or delivered in accordance with the terms hereof or thereof contains any untrue statement of a material fact, or, to the Knowledge of Calderwood, omits any statement of a material fact necessary in order to make the statements contained herein or therein not misleading. There is no fact known to Calderwood which materially adversely affects the assets, liabilities, business, condition (financial or otherwise) or results of operations of the Business or any of the Contributed Companies, which has not been set forth in this Agreement, the other Transaction Documents, the Financial Statements, any Schedule, Exhibit or certificate attached hereto or thereto or delivered in accordance with the terms hereof or thereof or any document or statement in writing which has been delivered to the Investor by or on behalf of Calderwood or the Contributed Companies in connection with the transactions contemplated hereby.

Except as set forth in this Agreement, the Pledge Agreement, the Calderwood Employment Agreement and any Transaction Document to which Calderwood is a party, Calderwood makes no other individual representations or warranties.

Section 9. Sale, Assignment, Transfer or other Disposition

9.1. Prohibited Transfers. Except as otherwise provided in this Agreement, no Member shall (i) Transfer, directly or indirectly, all or any part of its Interest (whether legal or beneficial) in the Company or (ii) permit any Transfer, directly or indirectly of all or any part of any interest in such Member, and any attempt to so Transfer such Interest or such interest in a Member (and such Transfer) in violation of this Section 9.1 shall be null and void and of no effect.

9.2. Permitted Transfers. Without limiting any of Investor's rights under this Agreement, Investor may Transfer all or any portion of its Interest at any time to an Affiliate of Investor. Furthermore, nothing in this Agreement shall restrict (i) any direct or indirect Transfers of (x) interests in the Investor to any Affiliates or (y) interests in any corporation, partnership, joint venture, limited liability company or other corporate entity, which, for tax planning purposes, was directly or indirectly issued interests in Investor, to any Person; or (ii) Investor (or any Person having a direct or indirect interest in Investor) from having the right at any time to pledge to a lender or creditor (or any trust or security agent acting on such lender's or creditor's behalf), directly or indirectly, all or any part of its Interest in the Company (or all or any part of the applicable interests owned by such other Person) for such purposes as Investor (or such other Person) deems necessary in the ordinary course of its business and operations. Investor shall provide the Company notice as soon as practicable following any Transfer permitted by this Section 9.2.

9.3. Right of First Refusal.

(a) Without limiting any of the rights of the Investor under the terms of this Agreement, at any time after the third (3rd) anniversary of the Effective Date, the Investor shall have the right to Transfer all or any portion of its Interests to any Person(s) that is not an Affiliate ("Third Party Purchaser"), subject to, and in accordance with the terms, conditions and procedures set forth in this Section 9.3. For the avoidance of doubt, Transfers permitted pursuant to Section 9.2 shall not be subject to the provisions of this Section 9.3.

(b) Prior to a Transfer by the Investor pursuant to this Section 9.3, the Investor shall have received a bona fide third party cash offer for such Interests and shall, prior to acceptance of any such offer, give written notice of the same (the "Sale Notice") to Calderwood. The Sale Notice shall disclose in reasonable detail the identity of the prospective Third Party Purchaser(s), the amount of Interests to be Transferred, the material terms and conditions of the proposed Transfer, including, without limitation, the purchase price for the Interests to be Transferred (the "Proposed Purchase Price"). Calderwood may elect to purchase all, but not less than all, of the Interests proposed to be Transferred by the Investor to the Third Party Purchaser(s) upon the same terms and conditions as those set forth in the Sale Notice (a "ROFR Sale") by delivering a written notice of such election to the Investor within five (5) Business Days after the ROFR Notice has been delivered to Calderwood (a "ROFR Election"). If Calderwood does not timely and properly make a ROFR Election, then the Investor shall be free to close on a Transfer of its Interests to the Third Party Purchaser (a "Third Party Sale"). Regardless of whether or not the Investor closes on a Third Party Sale, if Calderwood does not timely exercise his right of first refusal pursuant to this Section 9.3 with respect to a proposed Transfer by the Investor to a Third Party Purchaser, then Calderwood shall not thereafter under any circumstances be entitled to a right of first refusal with respect to the Interests of the Investor which are the subject of the Sale Notice provided to Calderwood pursuant to Section 9.3(b) above. If, however, the Investor indicates in the Sale Notice that it proposes to Transfer less than 100% of its Interests to a Third Party Purchaser, then the right of first refusal granted to Calderwood pursuant to this Section 9.3 shall continue to be applicable to any subsequent disposition by Investor of Interests not referenced in the Sale Notice until such rights lapse in accordance with the terms of this Agreement.

(c) If Calderwood has timely and properly made a ROFR Election, Calderwood shall have forty (40) additional days from the date the ROFR Election was received by the Investor (the "ROFR Period") to obtain financing in the amount needed by Calderwood to consummate the ROFR Sale. If a closing of the ROFR Sale ("ROFR Closing") does not occur by the expiration of the ROFR Period, then the Investor shall be free to close on a Transfer of its interests to the Third Party Purchaser(s) unless Calderwood delivers to the Investor prior to the expiration of the ROFR Period: (i) an executed commitment letter(s) reflecting a firm obligation of Calderwood and a third party lending institution or investor (other than the Third Party Purchaser(s)) to finance the Proposed Purchase Price; and (ii) a non-refundable cash deposit payable to the Investor in the amount of ten percent (10%) of the Proposed Purchase Price (the "ROFR Deposit"), which shall be credited toward the Purchase Price if a ROFR Closing occurs ((i) and (ii) collectively, "Calderwood Commitment Deliveries"). If the Investor receives the Calderwood Commitment Deliveries prior to expiration of the ROFR Period, then Calderwood will have an additional thirty (30) days from the date the Investor receives such Calderwood Commitment Deliveries to consummate the ROFR Sale (the "Closing Period"). Such ROFR Sale shall be consummated on an "as is" and "where is" basis with no representations or warranties from Investor (other than a representation that it owns the Interests it is transferring free and clear of all Liens other than Liens securing indebtedness of the Company). If a ROFR Closing does not occur by expiration of the Closing Period, then (x) the Investor shall retain the ROFR Deposit, (y) the Investor shall be free to close a Transfer of its Interests to the Third Party Purchaser(s) or pursue and consummate a Transfer of all or any portion of its Interests to any Person on such terms and conditions as are determined by the Investor in its sole discretion and (z) Calderwood shall not thereafter under any circumstances be entitled to a right of first refusal with respect to Transfers of all or any portion of the Investor's Interests.

9.4. Calderwood Call Rights.

(a) Partial Call Right. Calderwood shall have the right, but not the obligation, at any time during the period commencing on the first (1st) anniversary of the Effective Date and ending on the fifth (5th) anniversary of the Effective Date ("Partial Call Right"), by providing written notice to the Investor (a "Partial Call Notice"), to acquire the Call Interest of the Investor at the Call Price, pursuant to the terms, conditions and procedures set forth in Section 9.4(c) below.

(b) Full Call Right. Following the occurrence of any Unresolvable Deadlock during the period commencing on the third (3rd) anniversary of the Effective Date and ending on the fifth (5th) anniversary of the Effective Date, Calderwood shall have the right ("Full Call Right" and collectively with the Partial Call Right, the "Call Rights"), but not the obligation, by providing written notice to the Investor (a "Full Call Notice"), to acquire the Call Interest of the Investor at the Call Price, pursuant to the terms, conditions and procedures set forth in Section 9.4(c) below.

(c) Call Procedures.

(i) Definitions.

(A) "Call Interest" shall mean (A) with respect to the exercise by Calderwood of his Partial Call Right pursuant to Section 9.4(a) above, a portion of the Investor's Interests which as of the date of the Partial Call Notice represents ten percent (10%) of the issued and outstanding Interests of the Company and (B) with respect to the exercise by Calderwood of his Full Call Right pursuant to Section 9.4(b) above, all (but not less than all) of the Investor's Interests.

(B) "Call Notice" shall mean either a Partial Call Notice delivered pursuant to Section 9.4(a) or a Full Call Notice delivered pursuant to Section 9.4(b).

(C) "Call Price" shall mean (A) with respect to the exercise by Calderwood of his Partial Call Right pursuant to Section 9.4(a) above, Five Million U.S. Dollars (U.S.$5,000,000) and (B) with respect to the exercise by Calderwood of his Full Call Right pursuant to Section 9.4(b) above, the greater of Twenty Million U.S. Dollars (U.S.$20,000,000) and the Pro Rata Value of the Interests.

(D) "Pro Rata Value" shall mean the cash amount that the Investor would have received on account of its Interest as a liquidating Distribution if (x) the Company sold all the Company Assets on the date the Call Notice was delivered for a sales price equal to the fair market value (as determined in accordance with Section 9.4(d) below) of the Company (the "Fair Market Value"), (y) the Company applied the proceeds of such sale to satisfy all outstanding indebtedness and liabilities (other than contingent liabilities unless the Company has established reserves in respect of such contingent liabilities), and (z) the Company then distributed the remaining sales proceeds pursuant to Section 10.3 on the date the acquisition of the Interest is scheduled to occur.

(E) "Unresolvable Deadlock" shall mean a disagreement between Calderwood and the Investor regarding a Major Decision which (i) Calderwood and the Investor are unable to resolve despite good faith efforts within a period of ninety (90) days following the date on which such matter is brought before the Board for consideration and (ii) reflects a fundamental divergence in each Member's views regarding the desired strategic direction of the Company and which if not promptly resolved would be reasonably likely to result in further deadlocks on other matters.

(ii) Terms and Conditions. If a Call Notice is delivered by Calderwood to the Investor, Calderwood shall acquire and the Investor shall Transfer, the Call Interest (the "Call Sale"), in each case on the following terms:

(A) The Investor and Calderwood shall consummate the Call Sale on an "as is" and "where is" basis with no representations or warranties (other than a representation from the Investor that it owns the Interests it is transferring free and clear of all Liens other than Liens securing Indebtedness of the Company) within thirty (30) days after (x) Investor's receipt of a Partial Call Notice or (y) in

the event the Investor receives a Full Call Notice, the final determination of Fair Market Value in accordance with the procedures set forth in Section 9.4(d) below (the "Call Closing Period"). The Call Price, after giving credit to the Call Deposit, shall be paid by Calderwood to the Investor on the closing of the Call Sale (the "Call Closing") in immediately available funds to a bank account(s) designated in writing in advance of the Call Closing by the Investor.

(B) Contemporaneously with delivering its Call Notice to the Investor, Calderwood will disclose in writing to the Investor any material information concerning the Company's financial projections or forecasts known to, or in the possession of, Calderwood or any of his affiliates, which information has not otherwise previously been disclosed in writing to the Investor.

(C) Calderwood shall immediately deliver (but in no event later than three (3) Business Days after delivery of the Call Notice) to the Investor by wire transfer pursuant to the Investor's written instructions a non-refundable deposit (the "Call Deposit") in an amount equal to ten percent (10%) of the Call Price which shall be credited toward the Call Price if a Call Closing occurs. If the Call Sale fails to close within the Call Closing Period as a result of a default of Calderwood or Calderwood does not timely deliver the Call Deposit to the Investor in accordance with the terms hereof, then (i) Calderwood shall be in material default hereunder and the Investor shall have the right to retain the Call Deposit or, if such Call Deposit has not been delivered, an amount equal to the Call Deposit as liquidated damages, and (ii) Calderwood shall not thereafter under any circumstances be entitled to exercise any Call Right hereunder and the Investor shall have no further obligations whatsoever under this Section 9.4.

(d) Fair Market Value Determination.

(i) The Investor and Calderwood shall attempt to mutually agree on the Fair Market Value. If they are unable to reach such an agreement within twenty (20) days after the receipt by the Investor of the Call Notice, then either the Investor or Calderwood may elect by written notice to the other the requirement of independent appraisals of the Fair Market Value to be conducted by two Independent Appraisers, one selected by Calderwood and one selected by the Investor. The Company shall be solely responsible for the fees of the Independent Appraisers. As used herein, "Independent Appraiser" shall mean a certified public accountant, investment banker or other advisor associated with a major national (or international) accounting firm, investment bank or advisory firm, as the case may be, with offices in New York City, with (i) no history of being engaged by either Calderwood or the Investor, and (ii) experience in valuing interests in hotel management companies.

(ii) In conducting its appraisal, each Independent Appraiser shall assume the Company Assets would be sold in its as-is condition for cash by a willing seller, not compelled to sell, to a single willing buyer, not compelled to buy, with each of seller and buyer being apprised of all relevant facts, in an arms' length, negotiated transaction with an unaffiliated third party without time constraints.

(iii) The Independent Appraisers shall submit their determination of the Fair Market Value to the Calderwood and the Investor within twenty (20) days after the date of their selection. If the Independent Appraisers provide different opinions of Fair Market Value, Calderwood and the Investor shall endeavor to agree upon a value between the two opinions. In the event no such agreed-upon value is established, then (A) if the lower valuation is equal to or greater than 90% of the higher valuation, the Fair Market Value shall be the value halfway between the two valuations, or (B) if the lower valuation is less than 90% of the higher valuation, the Independent Appraisers shall select jointly a neutral appraiser (who shall meet the qualifications stated above and whose fees shall be borne by the Company) to determine the Fair Market Value in accordance with the foregoing procedure and such neutral appraiser's valuation shall be the final determination of Fair Market Value, provided, that, in the case of the preceding clause (B), the Fair Market Value shall not be less than the lesser of the two initial valuations and not greater than the greater of the two initial valuations.

(e) The Partial Call Right and Full Call Right described in this Section 9.4 are personal to Calderwood and cannot be Transferred to any other Person.

9.5. Management Interests.

(a) The Board shall establish, within ten (10) Business Days after the Effective Date, a program under which certain employees of the Company and other parties related to the Company, as approved by Calderwood, subject to the consent of the Investor (which consent shall not be unreasonably withheld), shall be issued Interests in the Company (each a "Management Interest"), on the terms and conditions set forth herein and on Exhibit G hereto (as such program may be amended, restated and supplemented from time to time by the Board, the "Management Incentive Program") and such other terms and conditions as may be required by the Board from time to time. The Management Incentive Program shall comply with all applicable Laws (including, without limitation, securities Laws). The Management Incentive Program (and the terms and conditions thereof) may only be amended by the Board (including the approval of the Investor Manager). Any individual who is awarded such Management Interest shall be referred to as a "Management Member."

(b) The issuance of Management Interests shall dilute only the Percentage Interest and amounts distributable hereunder to Calderwood and not the Percentage Interest or amounts distributable hereunder to the Investor. In no event shall the Management Interests issued pursuant to this Section 9.5 exceed, in the aggregate, Interests which would dilute Calderwood's Percentage Interest in the Company below 50.1%. To the extent any Management Interests are forfeited, all rights to receive Distributions in respect of such Management Interests shall revert back to Calderwood.

(c) Upon termination of the employment of any Management Member for any reason, Calderwood shall have a right to purchase any vested Management Interests from such Management Member within thirty (30) days following such termination (the "Calderwood Repurchase Period") for the fair market value of such Management Interests at the time of termination as determined by the Board in its sole discretion ("Board Determined FMV"); provided, that, if the Management Member whose Management Interest is being repurchased is a

Calderwood Manager at the time of such determination, the quorum requirement and decision of the Board shall be satisfied and made solely by the Managers other than the Management Member. In the event that Calderwood does not timely exercise such purchase right, the Company will have the right to purchase the Management Interests at the Board Determined FMV.

(d) Tax Matters Related to Management Interests.

(i) The Company intends that any Management Interest awarded hereunder be treated as a "profit interest" under IRS Revenue Procedure 93-27 and IRS Revenue Procedure 2001-43 and the provisions hereof shall be interpreted and applied consistently therewith. If a Management Interest is issued after the Effective Date, then the Board may make appropriate adjustments to the terms of such Management Interest in order for such Management Interest to be treated as a "profits interest" as described in the immediately preceding sentence, including establishing a Benchmark Amount of cumulative distributions that must be made with respect to all or one or more specified classes of Interests outstanding immediately prior to the issuance of such Management Interest before such Management Interest is entitled to receive any distributions and/or adjusting the Benchmark Amount in respect of such Management Interests.

(ii) Each Member hereby authorizes and directs the Company to make an election (the "Safe Harbor Election") to value any Management Interests issued by the Company as compensation for services at liquidation value as the same may be permitted pursuant to or in accordance with temporarily or finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and the proposed Revenue Procedure set forth in IRS Notice 2005-43 (the "IRS Notice"). For purposes of making such Safe Harbor Election, the Tax Matters Member is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by the Tax Matters Member constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the IRS Notice. The Company and each Member shall comply with all requirements of the Safe Harbor Election described in the IRS Notice, including the requirement that each Member prepare and file all federal income tax returns reporting the income tax effects of each interest in the Company issued by the Company covered by the Safe Harbor Election in a manner consistent with the requirements of the IRS Notice.

(iii) Each Member hereby authorizes the Tax Matters Member to amend Section 9.5(d)(ii) to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the IRS Notice (e.g., to reflect changes from the rules set forth in the IRS Notice in subsequent IRS guidance), provided that such amendment is not materially adverse to such Member (as compared with the after-tax consequences that would result if the provisions of the IRS Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

(e) Notwithstanding anything in this Agreement to the contrary, no Management Member shall (i) have any voting rights whatsoever with respect to any action or decision taken or made (or to be taken or made) by the Company or the Board (other than such voting rights as a Management Member may have pursuant to Section 7.1 as a Calderwood Manager, if applicable), (ii) have any right whatsoever to appoint managers to the Board, (iii) have any appraisal rights or any preemption rights whatsoever, or (iv) directly or indirectly Transfer its Management Interest to any Person without the prior consent of Calderwood and the Investor.

(f) Without limiting the foregoing, the Investor approves, and the Members hereby agree that Calderwood shall be entitled to authorize, the issuance of the Management Interests following the Effective Date to each of Brad Wilson, Kelly Sawdon, and Tungsten Partners in the amounts (reflecting percentage interest in the Company) set forth on Schedule 9.5, which Management Interests shall be subject in all respects to the limitations and requirements set forth in Section 9.5 and Exhibit G, including, without limitation, the anti-dilution protections of Investor, minimum Calderwood holding requirements, buyback provisions and Transfer restrictions set forth elsewhere in this Section 9.5.

9.6. Admission of Transferee.

(a) Notwithstanding anything in this Section 9 to the contrary and except as provided in Sections 9.2(ii) and 11.8 hereof, no Transfer of Interests shall be permitted unless the potential transferee is admitted as a Member under this Section. If a Member Transfers all or any portion of its Interest in accordance with the terms of this Agreement, such transferee may become a Member if (i) such transferee executes and agrees to be bound by this Agreement, (ii) the transferor and/or transferee pays all reasonable legal and other fees and expenses incurred by the Company in connection with such assignment and substitution and (iii) the transferor and transferee execute such documents and deliver such certificates to the Company and the remaining Members as may be required by applicable Law or otherwise advisable by the Board. Without limiting the foregoing, unless a transferee of a Member's Interest is admitted as a Member under this Section, it shall have none of the powers of a Member hereunder and shall only have such rights of an assignee under applicable law as are consistent with the other terms and provisions of this Agreement. If a transferee of a Member's Interest is not admitted as a Member under this Section, the transferor shall retain all non-economic rights of a Member, including, without limitation, the power to vote such Member's Interest on all matters coming before the Members for a vote. Upon the Transfer of all its Interests in the Company and the admission of such Member's transferee(s) pursuant to this Section, a transferor shall be deemed to have withdrawn from the Company as a Member.

(b) Notwithstanding anything in the foregoing to the contrary, any Transfer or purported Transfer of any Interest, whether to another Member or to a third party, shall be of no effect, and such transferee shall not become a Member, if the Board determines in its sole discretion that (i) the Transfer would require registration of any Interest under any Federal or state securities Laws; or (ii) the Transfer would result in a violation of any Law.

(c) The Board may reasonably require the provision of a certificate as to the legal nature and composition of a proposed transferee of an Interest of a Member and from any

Member as to its legal nature and composition and shall be entitled to rely on any such certificate in making such determinations under this Section.

9.7. Withdrawals and Withdrawing Members.

(a) Each of the Members hereby covenants and agrees that it will not withdraw, resign, retire or disassociate from the Company, except as a result of a Transfer of its entire Interests permitted under the terms of this Agreement to a transferee admitted as a Member of the Company pursuant to the terms of Section 9.6, and that it will carry out its duties and responsibilities hereunder until the Company is terminated, liquidated and dissolved under Section 10.3. No Member shall be entitled to receive any Distribution or otherwise receive the fair market value of its Interest in compensation for any purported resignation or withdrawal not in accordance with the terms of this Agreement.

(b) Upon the death or disability of a Member (in the case of a Member who is an individual), winding up and termination of a Member (in the case of a Member that is a partnership or a limited liability company), dissolution and termination of a Member (in the case of a Member that is a corporation), or withdrawal in contravention of Section 9.7(a) of a Member, or the occurrence of a Bankruptcy/Dissolution Event with respect to a Member (the "Withdrawing Member"), the Withdrawing Member shall cease to be a Member of the Company and the other Members and the Board shall, subject to this Section, have the right to treat such successor(s)-in-interest as assignee(s) of the Interest of the Withdrawing Member, with only such rights of an assignee of a limited liability company interest under the Act as are consistent with the other terms and provisions of this Agreement and with no other rights under this Agreement. Without limiting the generality of the foregoing, the successor(s)-in-interest of the Withdrawing Member shall only have the rights to Distributions provided in Sections 4 and 10.3, unless otherwise waived by the other Members in their sole discretion. For purposes of this Section, if the Withdrawing Member's Interest is held by more than one Person (for purposes of this subparagraph, the "Assignees"), the Assignees shall appoint one Person with full authority to accept notices and Distributions with respect to such Interest on behalf of the Assignees and to bind them with respect to all matters in connection with the Company or this Agreement.

## Section 10. Dissolution

10.1. Limitations. The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Section, and, to the fullest extent permitted by Law but subject to the terms of this Agreement, the parties hereto do hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company's assets.

10.2. Exclusive Events Requiring Dissolution. The Company shall be dissolved only upon the earliest to occur of the following events (each a "Dissolution Event"):

(a) at any time upon the mutual agreement of Investor and Calderwood in writing;

(b) at any time there are no Members (unless otherwise continued in accordance with the Act); or

(c) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act.

10.3. Liquidation. Upon the occurrence of a Dissolution Event, the business of the Company shall be continued to the extent necessary to allow an orderly winding up of its affairs, including the liquidation of the assets of the Company pursuant to the provisions of this Section, as promptly as practicable thereafter, and each of the following shall be accomplished:

(a) The Board shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.

(b) The property and assets of the Company shall be liquidated or distributed in kind under the supervision of Investor and Calderwood as promptly as possible, but in an orderly, businesslike and commercially reasonable manner.

(c) Any gain or loss realized by the Company upon the sale of its property shall be deemed recognized and allocated to the Members in the manner set forth in Section 5.1. To the extent that an asset is to be distributed in kind, such asset shall be deemed to have been sold at its fair market value on the date of distribution, the gain or loss deemed realized upon such deemed sale shall be allocated in accordance with Section 5.1 and the amount of the distribution shall be considered to be such fair market value of the asset. If, after making such all such allocations, any Member's Capital Account is not equal to the amount to be distributed to such Member pursuant to Section 10.3(d)(iv), the Net Profits and Net Losses for the Fiscal Year in which the Company is dissolved are to be allocated among the Members in such a manner as to cause, to the extent possible, each Member's Capital Account to be equal to the amount to be distributed to such Member pursuant to Section 10.3(d)(iv).

(d) The proceeds of sale and all other assets of the Company shall be applied and distributed as follows and in the following order of priority:

(i) to the satisfaction of the debts and liabilities of the Company (contingent or otherwise) and the expenses of liquidation or distribution (whether by payment or reasonable provision for payment), other than liabilities to Members or former Members for distributions;

(ii) to the satisfaction of loans made by Members to the Company pursuant to the terms herein in proportion to the outstanding balances of such loans at the time of payment;

(iii) to the setting up of any reserves which Investor and Calderwood shall reasonably determine to be necessary for contingent, unliquidated or unforeseen liabilities or obligations of the Company; and

(iv) the balance, if any, to the Members in the following order and priority:

(A) First, to the Investor until the Investor's Unreturned Capital Amount has been reduced to zero;

(B) Second, to the Members, on a *pari passu* basis, *pro rata* in proportion to their respective Percentage Interests.

10.4. Continuation of the Company. Notwithstanding anything to the contrary contained herein, the death, retirement, resignation, expulsion, bankruptcy, dissolution or removal of a Member shall not in and of itself cause the dissolution of the Company, and the Members are expressly authorized to continue the business of the Company in such event, without any further action on the part of the Members.

## Section 11. Indemnification

11.1. Exculpation of Members. No Member, Manager or officer of the Company (or their respective agents, officers, directors, members, managers, partners, shareholders or employees) shall be liable to the Company or to the other Members for Damages or otherwise with respect to any actions or failures to act taken or not taken relating to the Company, except in the case of Calderwood only, to the extent any such Damage results from acts which are indemnified against by Calderwood under Section 11.4 hereof or the Calderwood Employment Agreement.

11.2. Indemnification by Company. To the fullest extent permitted by applicable Law, but without in any way limiting Calderwood's indemnification obligations under Section 11.4 hereof or the Calderwood Employment Agreement, the Company hereby indemnifies, holds harmless and defends the Members, the Managers, the Officers and each of their respective agents, officers, directors, members, managers, partners, shareholders and employees from and against any Damages suffered or sustained by them by reason of or arising out of (i) their activities on behalf of the Company or in furtherance of the interests of the Company, (ii) their status as Members, Managers, employees or officers of the Company or any Subsidiary (or their status as the respective agents, officers, directors, members, managers, partners, shareholders or employees of such Persons), or (iii) the Company's assets, property, business or affairs (including, without limitation, the actions of any officer, director, member, manager, shareholder, partner or employee of the Company or any Subsidiary), if the acts or omissions were not performed or omitted fraudulently or as a result of gross negligence or willful or wanton misconduct by the indemnified party or as a result of the material breach of any obligation under this Agreement by the indemnified party. For the purposes of this Section, officers, directors, agents, members, managers, shareholders, partners and employees of Affiliates of a Member who are functioning as Managers of such Member in connection with this Agreement shall be considered Managers of such Member. Reasonable expenses incurred by the indemnified party in connection with any such proceeding relating to the foregoing matters shall be paid or reimbursed by the Company in advance of the final disposition of such proceeding upon receipt by the Company of (x) written affirmation by the Person requesting indemnification of its good faith belief that it has met the standard of conduct necessary for indemnification by

the Company and (y) a written undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined by a court of competent jurisdiction that such Person has not met such standard of conduct, which undertaking shall be an unlimited general obligation of the indemnified party but need not be secured. The provisions of this Section 11.2 shall not apply to any services or acts of a Member, its Affiliates or their agents, officers, directors, members, managers, partners, shareholders and employees, in each case as independent contractors of the Company.

11.3. Survival. Regardless of any investigation made by or on behalf of any Member hereto or its Affiliates or the knowledge of any such Member's or its Affiliates' officers, directors, agents, members, managers, shareholders, partners and employees, the representations and warranties of any Member hereto and any obligation of a Member hereto to indemnify the other Member in respect of any breach of any representation and warranty set forth in Section 8 hereof shall survive the Effective Date until the date which is three (3) years from the date hereof, except that (a) the representations and warranties contained in Section 8.1 in its entirety; Section 8.2(a) (Capitalization; Ownership); Section 8.2(b) (Due Formation; Authorization of Transaction Documents); Section 8.2(c) (No Conflict with Restrictions; No Default); Section 8.2(d) (Authorizations); Section 8.2(e) (Consents); and Section 8.2(u) (Brokers) shall survive the Effective Date indefinitely; and (b) the representations and warranties contained in Section 8.2(i) (Taxes); Section 8.2(j)(ii) (Environmental Matters); and Section 8.2(n) (Employee Benefit Matters) shall survive until sixty (60) days following the expiration of the applicable statute of limitations (giving effect to any extensions and waivers thereof). The Parties agree that so long as written notice of a specific claim of indemnifiable Damages (including a description of the alleged breach or violation and to the extent known as detailed an explanation of the loss suffered as is reasonably practicable as a result of such alleged breach or violation) is given in good faith on or prior to the expiration of the applicable survival period with respect to such claim, the representations and warranties that specifically relate to such alleged breach and the obligation to indemnify for such alleged breach shall continue to survive until such matter is finally resolved.

11.4. Indemnification

(a) Indemnification by Calderwood. From and after the Effective Date, Calderwood shall indemnify, defend and hold harmless the Investor and each of its Affiliates and each of their respective shareholders, partners, members, managers, directors, officers, trustees, trust administrators, trust beneficiaries, employees, agents and representatives (collectively, the "Investor Indemnified Parties") from and against the entirety of any Damages suffered, incurred or paid by the Investor Indemnified Parties either directly, or indirectly through application of the Company's assets or otherwise, or by the Company or any of its Subsidiaries, in each case as a result of, arising out of or related to: (i) any breach, inaccuracy or failure of any representation or warranty made by Calderwood contained in Section 8.1 or Section 8.2 of this Agreement to be true and correct in all respects as of the Effective Date, without giving effect to any limitation or qualification as to "materiality," "material," "Material Adverse Effect" or similar qualifiers set forth in such representations and warranties for purposes of determining the amount of Damages suffered; (ii) any failure of Calderwood or any Existing Member to have and Transfer to the Company good, valid and marketable title to the Calderwood Contributed Interests and the Buyout Interests,

respectively, free and clear of all Liens and Orders; (iii) any Action by a former member or stockholder of any Contributed Company (or its predecessor) or any other Person seeking to assert ownership or rights to ownership of any interests of the Company or any Contributed Company; (iv) any Action asserting that the Company or any of its Subsidiaries are not entitled to operate another hotel in the Borough of Manhattan in the State of New York under the name "Ace" during the term of the New York Management Agreement, other than an Action seeking solely to enforce the Limited Non-Compete Provision; (v) any Pre-Closing Taxes, (vi) any Action relating to or Liability arising under that certain Loan Agreement, dated April __, 2006, by and between Clyde Hotel Building, LLC and Ace Hotel Group, LLC, as amended, (vii) any Action relating to or arising from the American Casino Disputes; or (viii) that certain federal tax Lien filed against Calderwood on February 16, 2011 in the amount of $141,875.77. The provisions of this Section 11.4 are for benefit of the Investor Indemnified Parties, and not for the benefit of the Company, and therefore, if it is determined that the Company has suffered any Damages as a result of, arising out of or related to the indemnified matters set forth in clauses (i) through (viii) above, the Investor Indemnified Parties shall have the right to direct that Calderwood pay any such Damages recoverable hereunder: (x) directly to the Investor Indemnified Parties, (y) to the Company, or (z) to the Company and Investor Indemnified Parties in such proportions as determined by the Investor in its sole discretion.

(b) Indemnification by Investor. From and after the Effective Date, Investor shall indemnify, defend and hold harmless, Calderwood from and against the entirety of any Damages suffered, incurred or paid directly or indirectly through application of the Company's assets or otherwise, as a result of, arising out of or related to any breach, inaccuracy or failure of any representation or warranty made by the Investor contained in Section 8.1 of this Agreement to be true and correct in all respects as of the Effective Date, without giving effect to any limitation or qualification as to "materiality," "material," "Material Adverse Effect" or similar qualifiers set forth in such representations and warranties for purposes of determining the amount of Damages suffered.

11.5. Limits on Indemnification

(a) Other than with respect to Damages arising out of, resulting from or related to (i) fraud, bad faith or willful misconduct by Calderwood, in each case for which there shall be no limitations on Liability and (ii) Section 11.4(a)(vii) which shall be subject to Section 11.5(d) below, (A) the aggregate Liability of Calderwood to indemnify the Investor Indemnified Parties from and against any Damages pursuant to Section 11.4(a) shall not exceed Ten Million US Dollars (U.S. $10,000,000) in the aggregate, and (B) Calderwood shall not be liable for any claim for indemnification pursuant to Section 11.4(a) unless and until the aggregate amount of Damages which may be recovered from Calderwood equals or exceeds Fifty Thousand US Dollars (US$50,000) (the "Calderwood Basket"), at which point Calderwood shall be liable for, and the Investor shall be entitled to recover, the Calderwood Basket, as well as the amount of Damages in excess of the Calderwood Basket.

(b) Other than with respect to Damages arising out of, resulting from or related to fraud, bad faith or willful misconduct by the Investor for which there shall be no limitations on Liability, (i) the aggregate Liability of the Investor to indemnify Calderwood from and against any Damages pursuant to Section 11.4(b) shall not exceed Ten Million US

Dollars (U.S. $10,000,000) in the aggregate, and (ii) the Investor shall not be liable for any claim for indemnification pursuant to Section 11.4(b) unless and until the aggregate amount of Damages which may be recovered from the Investor equals or exceeds Fifty Thousand US Dollars (US$50,000) (the "Investor Basket"), at which point the Investor shall be liable for, and Calderwood shall be entitled to recover, the Investor Basket, as well as the amount of Damages in excess of the Investor Basket.

(c) The amount of Damages payable by the Indemnifying Party shall be reduced by amounts actually recovered (minus any reasonable out of pocket cost or expense of recovery or increased premiums) (A) under applicable insurance policies or (B) from any other third party with indemnification or contribution obligations. If an Indemnified Party receives any amounts under applicable insurance policies or from any other third party with indemnification obligations, subsequent to an indemnification payment by any Indemnifying Party, then such Indemnified Party shall within ten (10) days of its receipt of such amounts reimburse the Indemnifying Party in full for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount received by the Indemnified Party (minus any reasonable out of pocket cost or expense of recovering or collecting such payments and minus any increased premiums or other increased insurance costs).

(d) The Company shall be obligated to pay for the first US$150,000 (the "ACD Deductible") of Damages, including legal fees and related costs, incurred by the Company or any of its Subsidiaries after the Effective Date in connection with the American Casino Disputes (the "ACD Damages"), at which point Calderwood shall be responsible for all ACD Damages in excess of the ACD Deductible. The Parties agree that any Distributions otherwise payable to Calderwood under this Agreement shall be paid directly to the Company for the purpose of satisfying any ACD Damages in excess of the ACD Deductible; provided, that to the extent sufficient funds are not available for Distribution to Calderwood pursuant to Section 4 hereof to fully satisfy the amount of ACD Damages in excess of the ACD Deductible (the "Excess ACD Damages"), Calderwood shall reimburse the Company an amount in cash equal to the Excess ACD Damages promptly as such Excess ACD Damages are incurred, but in any event no later than the first Business Day of each month; provided further, that if Calderwood defaults on his obligations under this Section 11.5(d), the Investor shall, to the fullest extent permitted by Law, be deemed, without payment of further consideration or the taking of further action by Calderwood, to have acquired from Calderwood such portion of the Indemnity Collateral as shall be equal in value to the amount of Excess Damages not paid in cash to the Company pursuant hereto. For the avoidance of doubt, this Section 11.5(d) is for the benefit of the Investor, and not the Company, and nothing herein is intended modify, qualify or limit the Investor Consent Rights with respect to the American Casino Disputes set forth in Exhibit E hereto.

(e) The remedies provided for in this Section 11 (including, without limitation, the granting of security interests contemplated by Section 11.8 and the Pledge Agreement) shall be the Parties' sole and exclusive remedy for any of the matters specifically referenced in Sections 11.4(a) and 11.4(b) hereof; provided, that notwithstanding the foregoing, nothing herein shall limit any recourse or remedy that may be available against any Indemnifying Party that has defrauded an Indemnified Party.

11.6. Indemnification Procedure. (a) As promptly as practicable after the incurrence of any Damages by any Person entitled to indemnification pursuant to Section 11.3, Section 11.4 or Section 11.5(d) hereof (an "Indemnified Party"), including, any claim by a third party described in Section 11.7, which might give rise to indemnification hereunder, the Indemnified Party shall deliver to the party from which indemnification is sought (the "Indemnifying Party") a certificate (a "Claim Certificate"), which Claim Certificate shall:

(i) state that the Indemnified Party has paid or anticipates it will incur Liability for or suffer Damages for which such Indemnified Party is entitled to indemnification pursuant to this Agreement; and

(ii) specify in reasonable detail (and have annexed thereto all supporting documentation, including any correspondence in connection with any Third-Party Claim and paid invoices, if any, for claimed Damages) each individual item of loss included in the amount so stated, the date such item was paid (if paid), the basis for any anticipated Liability and the nature of the misrepresentation, breach of warranty, breach of covenant or claim to which each such item is related and the computation of the amount to which such Indemnified Party claims to be entitled hereunder.

(b) In the event that the Indemnifying Party shall object to the indemnification of an Indemnified Party in respect of any claim or claims specified in any Claim Certificate, the Indemnifying Party shall, within ten (10) days after receipt by the Indemnifying Party of such Claim Certificate, deliver to the Indemnified Party a notice to such effect, specifying in reasonable detail the basis for such objection, and the Indemnifying Party and the Indemnified Party shall, within the thirty (30) day period beginning on the date of receipt by the Indemnified Party of such objection, attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims to which the Indemnifying Party shall have so objected. If the Indemnified Party and the Indemnifying Party shall succeed in reaching agreement on their respective rights with respect to any of such claims, the Indemnified Party and the Indemnifying Party shall promptly prepare and sign a memorandum setting forth such agreement. Should the Indemnified Party and the Indemnifying Party be unable to agree as to any particular item or items or amount or amounts within such time period, then the Indemnified Party shall be permitted to submit such dispute to a court of competent jurisdiction as set forth in Section 12.2.

(c) Claims for Damages specified in any Claim Certificate to which an Indemnifying Party shall not object in writing within forty-five (45) days of receipt of such Claim Certificate, claims for Damages covered by a memorandum of agreement of the nature described in Section 11.6(b), and claims for Damages the validity and amount of which have been the subject of judicial determination as described in Section 11.6(b) or shall have been settled with the consent of the Indemnifying Party, as described in Section 11.7, are hereinafter referred to, collectively, as "Agreed Claims". Within ten (10) Business Days of the determination of the amount of any Agreed Claim, the Indemnifying Party shall pay to the Indemnified Party an amount equal to the Agreed Claim by wire transfer in immediately available funds to the bank account or accounts designated by the Indemnified Party in a notice to the Indemnifying Party not less than two (2) Business Days prior to such payment.

11.7. Third-Party Claims.

(a) If a claim by a third party (a "Third Party Claim") is made against Calderwood or, with respect to any Indemnified Investor Party, a Third Party Claim is made against the Investor Indemnified Party and/or the Company or any of its Subsidiaries, and if such Indemnified Party intends to seek indemnity with respect thereto under this Section 11, such Indemnified Party shall promptly notify the Indemnifying Party of such Third Party Claim; provided, that the failure to so notify shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is actually and materially prejudiced thereby. The Indemnifying Party shall have thirty (30) days after receipt of such notice to assume the conduct and control, through counsel reasonably acceptable to the Indemnified Party at the expense of the Indemnifying Party, of the settlement or defense of such Third Party Claim; provided, that (i) the Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party; provided that the fees and expenses of such counsel shall be borne by such Indemnified Party and (ii) the Indemnifying Party shall promptly be entitled to assume the defense of such action only to the extent the Indemnifying Party acknowledges in writing its indemnity obligation and assumes and holds such Indemnified Party harmless from and against the full amount of any Damages resulting therefrom; provided, further, that the Indemnifying Party shall not be entitled to assume control of such defense and shall pay the fees and expenses of counsel retained by the Indemnified Party if (A) such Third Party Claim would give rise to Damages which are more than twice the amount indemnifiable by such Indemnifying Party pursuant to this Section 11; (B) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (C) the claim seeks an injunction or equitable relief against the Indemnified Party; (D) the Indemnified Party has been advised in writing by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Party and the Indemnified Party; (E) the Indemnified Party reasonably believes an adverse determination with respect to the action, lawsuit, investigation, proceeding or other claim giving rise to such claim for indemnification would be detrimental to or injure the Indemnified Party's reputation or future business prospects; or (F) upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend such Third Party Claim.

(b) Any Indemnified Party shall have the right to employ separate counsel in any such action or claim and to participate in the defense of such Third Party Claim, but the fees and expenses of such counsel shall not be at the expense of the Indemnifying Party unless (i) the Indemnifying Party shall have failed, within a reasonable time after having been notified by the Indemnified Party of the existence of such Third Party Claim as provided in the preceding sentence, to assume the defense of such Third Party Claim, (ii) the employment of such counsel has been specifically authorized in writing by the Indemnifying Party, which authorization shall not be unreasonably withheld, or (iii) the named parties to any such action (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party and such Indemnified Party shall have been advised in writing by such counsel that there may be one or more legal defenses available to the Indemnified Party which are not available to the Indemnifying Party, or available to the Indemnifying Party the assertion of which would be adverse to the interests of the Indemnified Party. So long as the Indemnifying Party is reasonably contesting any such Third Party Claim in good faith, the Indemnified Party shall not pay or settle

any such Third Party Claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any such Third Party Claim, provided that in such event it shall waive any right to indemnity therefor by the Indemnifying Party for such Third Party Claim unless the Indemnifying Party shall have consented to such payment or settlement.

(c) If the Indemnifying Party does not notify the Indemnified Party within thirty (30) days after the receipt of the Indemnified Party's notice of a Third Party Claim of indemnity hereunder that it elects to undertake the defense thereof, the Indemnified Party shall have the right to contest, settle or compromise the Third Party Claim but shall not thereby waive any right to indemnity therefor pursuant to this Agreement.

(d) The Indemnifying Party shall not, except with the consent of the Indemnified Party, enter into any settlement that is not entirely indemnifiable by the Indemnifying Party pursuant to this Section 11 and does not include as an unconditional term thereof the giving by the Person or Persons asserting such Third Party Claim to all Indemnified Parties of an unconditional release from all Liability with respect to such Third Party Claim or consent to entry of any judgment.

(i) Notwithstanding any of the foregoing, in the event that the Indemnified Party is an Investor Indemnified Party and it is reasonably foreseeable that the amount of any loss to be incurred by the Investor Indemnified Party with respect to any Third Party Claim is more than twice the amount indemnifiable by the Indemnifying Party, the Investor Indemnified Party shall be entitled to conduct and control the defense and/or settlement of any such claim without the consent of the Indemnifying Party.

(ii) The Indemnifying Party and the Indemnified Party shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense to the Indemnifying Party and/or its counsel, such employees of the Indemnified Party as may be reasonably necessary for the preparation of the defense of any such Third Party Claim or for testimony as witnesses in any proceeding relating to such Third Party Claim.

11.8. Indemnity Collateral.

(a) As security for the indemnity obligations of Calderwood under Section 11.4 (the "Inducement Obligation"), Calderwood has executed and delivered to the Investor contemporaneously with the execution and delivery of this Agreement a certain Pledge Agreement, a copy of which is attached hereto as Exhibit I (the "Pledge Agreement") and related documents pursuant to which Calderwood grants to the Investor a Lien upon and a continuing security interest in (i) Calderwood's Interests in the Company (including any additional Interests therein acquired after the Effective Date), and (ii) Calderwood's membership interests in Modern Housing (including any additional membership interests therein acquired after the Effective Date), including all payments due or to become due to Calderwood hereunder or under the Modern Housing LLC Agreement and (iii) such other rights pledged under the Pledge Agreement (collectively, the "Indemnity Collateral"). Any Transfer by Calderwood of his Interests shall be subject to the Liens and security interests granted hereby until and unless such Liens and security interests are released by the Investor. The Pledge Agreement and the

Indemnity Collateral shall terminate upon the later of (i) the fifth anniversary of the Effective Date and (ii) final resolution, as evidenced by a duly executed and legally binding settlement agreement or a final and binding judgment of a court of competent jurisdiction and not subject to any appeals, of all indemnification claims against Calderwood which are pending as of the fifth anniversary of the Effective Date (the "Termination Date"); provided further, that any Indemnity Collateral foreclosed upon to satisfy any portion of the Inducement Obligation prior to the Termination Date shall not be subject to this release and termination.

(b) Calderwood shall, on the date hereof, have prepared and filed UCC-1 financing statements and such other documents and have taken such other action necessary to grant to the Investor a fully perfected first priority security interest in all of the Indemnity Collateral. Each Investor Indemnified Party shall have all of the rights now or hereafter existing under applicable law, and all rights as a secured creditor under the Uniform Commercial Code in all relevant jurisdictions, with respect to the Indemnity Collateral, and Calderwood agrees to take all such actions as may be reasonably requested of it by an Investor Indemnified Party to ensure that the Investor Indemnified Parties can realize on such security interest.

(c) If Calderwood does not pay in cash to the Investor or its designee the full amount of all Damages due and payable pursuant to a Final Determination within sixty (60) days following such Final Determination (the "Payment Deadline") or if Calderwood defaults on his obligation to reimburse the Company pursuant to Section 11.5(d), the Investor shall, to the fullest extent permitted by Law, be deemed, without payment of further consideration or the taking of further action by Calderwood, to have acquired from Calderwood such portion of the Indemnity Collateral as shall be equal in value to the amount of Damages not paid in cash to the Investor Indemnified Party by the Payment Deadline. In connection with the foregoing, at the request of the Investor, Calderwood shall execute and deliver to the Investor an amendment to this Agreement to reflect the change in the Interests and Percentage Interests of the Members.

11.9. Survival. The indemnities, contributions and other obligations under this Agreement shall be in addition to any rights that any Indemnified Party may have at Law, in equity or otherwise.

11.10. Waiver. For the avoidance of doubt and in furtherance of the indemnification agreements provided by Calderwood pursuant to this Section 11, Calderwood hereby unconditionally waives any rights Calderwood may have pursuant to, and agrees not to raise as a defense in connection with any claim made by the Investor Indemnified Parties hereunder, the Buyout Release, and agrees that the Buyout Release as it may be deemed to apply to the Company or any of its Affiliates with respect to claims against Calderwood shall be of no further force and effect. The inclusion of this provision shall in no way be used as or deemed to be evidence of an admission that such Buyout Release applies to any Investor Indemnified Party.

Section 12. Miscellaneous

12.1. Notices

(a) All notices, requests, approvals, authorizations, consents and other communications required or permitted under this Agreement shall be in writing (whether or

not expressly stated as to be in writing hereunder) and shall be (as elected by the Person giving such notice) hand delivered by messenger or overnight courier service, mailed (airmail, if international) by registered or certified mail (postage prepaid), return receipt requested, or sent via facsimile (provided such facsimile is immediately followed by the delivery of an original copy of same via one of the other foregoing delivery methods) addressed to:

If to Investor:

Ecoplace LLC
67 Irving Place North, 4th Floor
New York, NY 10003
Attention: Stefanos Economou

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

Reed Smith LLP
599 Lexington Avenue
New York, New York 10022
Attention: Kenneth Regensburg, Esq.
Facsimile: (212) 549-5450

If to Calderwood:

c/o Alex Calderwood
1000 Union Street, Apt. C
Seattle, WA 98101

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

Davis Wright Tremaine LLP
Suite 2200
1201 Third Avenue
Seattle, Washington 98101-3045
Attention: Matthew LeMaster
Facsimile: (206) 757-7700

(b) Each such notice shall be deemed delivered (i) on the date delivered if by hand delivery or overnight courier service or facsimile, and (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed (provided, however, if such actual delivery occurs after 5:00 p.m. (local time where received), then such notice or demand shall be deemed delivered on the immediately following Business Day after the actual day of delivery).

(c) By giving to the other Parties at least fifteen (15) days written notice thereof, the parties hereto and their respective successors and assigns shall have the right from

time to time and at any time during the term of this Agreement to change their respective addresses.

12.2. Governing Law; Consent to Jurisdiction.

(a) This Agreement and the rights of the Members hereunder shall be governed by, and interpreted in accordance with, the Laws of the State of Delaware.

(b) Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the New York State courts and the federal courts sitting in the County and State of New York and agrees that all matters involving this Agreement shall be heard and determined in such courts. Each of the Parties hereto waives irrevocably the defense of inconvenient forum to the maintenance of such action or proceeding, waives personal service of any and all process upon it, consents to service of process by registered mail directed to it at the address stated in Section 12.1, and acknowledges that service so made shall be deemed to be completed upon actual delivery thereof (whether accepted or refused).

12.3. Successors. This Agreement shall be binding upon, and inure to the benefit of, the parties and their successors and permitted assigns. Except as otherwise provided herein, any Member who Transfers its entire Interest as permitted by the terms of this Agreement shall have no further Liability or obligation hereunder, except with respect to claims arising prior to such Transfer.

12.4. Construction. In this Agreement, unless the context requires otherwise:

(a) words expressed in the singular or the plural shall include the singular and the plural;

(b) words expressed in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter;

(c) "or" is not exclusive;

(d) "include," "includes," and "including," are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar impact;

(e) "hereof," "herein," "hereunder," and like terms shall be taken as referring to this Agreement in its entirety and shall not be limited to any particular section or provision hereof;

(f) and all "$" and dollar amounts are in U.S. dollars.

12.5. Table of Contents and Captions Not Part of Agreement. The table of contents and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provisions hereof.

12.6. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable in any jurisdiction or in any respect, then the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired, and the Members shall use their commercially reasonable efforts to amend or substitute such invalid, illegal or unenforceable provision with valid, legal and enforceable provisions which would produce as nearly as possible the rights and obligations previously intended by the Members without renegotiation of any material terms and conditions stipulated herein.

12.7. Counterparts. This Agreement may be (i) executed in several counterparts, all of which shall constitute one and the same instrument and (ii) delivered by telecopy, facsimile or portable document format (PDF) by electronic mail (which shall be deemed an original for all purposes).

12.8. Entire Agreement and Amendment

(a) This Agreement, the Transaction Documents, the Pledge Agreement, the Calderwood Employment Agreement, and the other written agreements described herein between and/or among the parties hereto (and/or their Affiliates), constitute the entire agreement between the Members relating to the subject matter hereof and fully supersede any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof (including, without limitation, that certain Letter of Intent, dated August 9, 2011 (as amended) between the Investor and Calderwood).

(b) Any amendments to this Agreement shall require the approval of Investor and Calderwood.

(c) For the avoidance of doubt, without limiting Section 12.8(b) above, Sections 8 and 11 of this Agreement shall not be amended without the consent of Investor and shall survive indefinitely any withdrawal from the Company by a Member and any termination of this Agreement.

12.9. Further Assurances. Each Member agrees to execute and deliver any and all additional instruments and documents and do any and all acts and things as may be necessary or expedient to effectuate more fully this Agreement or any provisions hereof or to carry on the business contemplated hereunder.

12.10. No Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the Members and the Company, and no other party (including, without limitation, any creditor of the Company), shall have any right or claim against any Member by reason of those provisions or be entitled to enforce any of those provisions against any Member.

12.11. Incorporation by Reference. Every Exhibit, Schedule, and Annex attached to this Agreement is incorporated in this Agreement by reference. Unless otherwise expressly provided herein, all references to "Articles", "Sections", "subsections" or "paragraphs" are to Articles, Sections, subsections and paragraphs of this Agreement and all references to

"Exhibits", "Annexes" and "Schedules" are to the exhibits, annexes and schedules attached hereto.

12.12. Remedies Cumulative; Dispute Costs

(a) The rights and remedies given in this Agreement and by Law to a Member shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a Member under the provisions of this Agreement or given to a Member by Law.

(b) In the event of any dispute between the parties hereto, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs incurred in connection therewith.

12.13. No Waiver. One or more waivers of the breach of any provision of this Agreement by any Member shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a Member to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a Member by reason of such breach be deemed a waiver by a Member of its remedies and rights with respect to such breach or any subsequent breach.

12.14. Limitation On Use of Names. Notwithstanding anything contained in this Agreement or otherwise to the contrary, each Member as to itself agrees that neither it nor any of its Affiliates, agents, or Managers is granted a license to use or shall use the name of any other Member (or its Affiliates) under any circumstances whatsoever, except such name may be used in furtherance of the business of the Company but only as and to the extent approved in writing by the Member whose name is to be used.

12.15. Publicly Traded Partnership Provision. Each Member hereby severally covenants and agrees with the other Members for the benefit of such Members, that (a) it is not currently making a market in Interests in the Company and will not in the future make such a market and (b) it will not Transfer its Interest on an established securities market, a secondary market or an over-the-counter market or the substantial equivalent thereof within the meaning of Code Section 7704 and the Regulations, rulings and other pronouncements of the IRS or the Treasury Department. Each Member further agrees that it will not Transfer any Interest in the Company to any transferee unless such transferee agrees to be bound by this Section 12.15 and to Transfer such Interest only to such Persons who agree to be similarly bound.

12.16. Uniform Commercial Code. The interest of each Member in the Company shall be an "uncertificated security" governed by Article 8 of the Delaware UCC and the UCC as enacted in the State of New York (the "New York UCC"), including, without limitation, (a) for purposes of the definition of a "security" thereunder, the interest of each Member in the Company shall be a security governed by Article 8 of the Delaware UCC and the New York UCC and (b) for purposes of the definition of an "uncertificated security" thereunder.

12.17. Public Announcements. No Member or any of its Affiliates shall, without the prior written approval of the other Members, issue any press releases or otherwise make any

public statements with respect to the Company or the transactions contemplated by this Agreement and the Transaction Documents.

12.18. No Construction Against Drafter. This Agreement has been negotiated and prepared by the Members and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one party.

[Signatures on Next Page]

IN WITNESS WHEREOF, this Agreement is executed by the Members and the Company and is effective as of the date first set forth above.

**MEMBERS:**

ALEX CALDERWOOD

ECOPLACE LLC

By: _____
Name: Stefanos Economou
Title: Sole Manager

**COMPANY:**

ACE GROUP INTERNATIONAL LLC

By: _____
Name: ALEX CALDERWOOD
Title: MANAGING MEMBER

IN WITNESS WHEREOF, this Agreement is executed by the Members and the Company and is effective as of the date first set forth above.

**MEMBERS:**

_____
ALEX CALDERWOOD

ECOPLACE LLC

By: _____
Name: Stefanos Economou
Title: Sole Manager

**COMPANY:**

ACE GROUP INTERNATIONAL LLC

By: _____
Name:
Title: