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APPENDIX E

OPERATING AGREEMENT & BYLAWS FOR A SOCIOCRATIC BUSINESS

The following example is modified from the operating agreement for a Limited Liability Company (LLC) incorporated in Delaware. It contains the key clauses that can be used in many forms of sociocratic operating agreements and bylaws including nonprofit organizations, associations, local government agencies, etc.

In the United States, LLCs are now legal in all 50 states and the District of Columbia and currently provide the most efficient mechanism for establishing a fully sociocratic company that owns and governs itself. While a sociocratic company allows investors and protects the interests of investors, it does not grant them the exclusive right to sell or to control the company.

The key clauses can also be used as the basis of bylaws for a C or S corporation, but in these cases a "double corporation" strategy is required to enable the company to raise capital without giving stockholders the right to override consent decision-making. An explanation of the double corporation is outside the scope of this book but it involves setting up a foundation to hold the controlling stock. The members of the board of the foundation and the board of the corporation are defined as identical and the decisions of one to be those of the other.

This operating agreement is an example only and does not constitute legal advice. Because laws differ between jurisdictions, professional legal advice is required to address specific circumstances.

**OPERATING AGREEMENT
OF A SOCIOCRATIC LIMITED LIABILITY COMPANY (LLC)**

ARTICLE 1 THE SOCIOCRATIC CIRCLE-ORGANIZATION METHOD

1.1 Organizational Model

The LLC shall be structured and governed in accordance with the sociocratic Circle-Organization Method, the underlying principles of which are as follows:

1.1.1 The Principle of Consent

The principle of consent governs decision-making. This means that not every decision requires consent but that there will be consent about the policies by which decision-making takes a different form. Consent means there are no argued and paramount objections. In other words, a policy decision can only be made if no member of the circle raises a argued and paramount objection to it.

1.1.2 The Principle of Circles

The organization is composed of a hierarchy of semi-autonomous, self-organizing circles. A circle is a group of persons who are operationally related. Each circle has its own aim and has the authority and responsibility to execute, measure, and control its own activities and to maintain an appropriate level of knowledge and skill, assisted by a program of development conducted by the circle.

1.1.3 The Principle of Double-Linked Circles

All circles are double-linked. A lower circle is always linked to a higher circle in such a way that at least two persons, that is, the operational leader and at least one elected representative from the lower circle, belong to and participate in the decision making of the next higher circle.

1.1.4 The Principle of Election of Persons

Persons are elected to functions and tasks exclusively by consent after open discussion.

1.2 Structure

The organization of the LLC shall be a hierarchy of double-linked circles, in the following order, from top to bottom:

1.2.1 Top Circle

The top circle shall be the highest circle of the LLC, the powers and

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responsibilities of which are set forth in the articles of organization and this operating agreement. The composition of the top circle is defined in Article 2.

The top circle shall manage and direct the business and affairs of the LLC with full power to engage in any lawful act or activity under the General Limited Liability Company (LLC) Law of [name of jurisdiction] unless otherwise limited by the provisions of this operating agreement.

1.2.2 General Circle

The general circle shall consist of the chief executive officer (CEO), operational leaders of the department circles, and at least one representative from each department circle. The general circle shall manage the operations of the LLC within the limits set by the top circle.

The general circle shall:

- (a) Determine and control policy to realize its own aim(s) within limits set by the top circle.
- (b) Delegate part of its decision-making authority to the department circles so their aims can be achieved.
- (c) Assign functions and tasks to its own members to execute its own policy.
- (d) Decide, in its sole discretion, whether new department circles should be created or whether existing circles should be split up, combined, or dissolved. The department circle in question may not participate in the decision to dissolve its circle. The consent of the representative of the department circle in question shall not be required for the general circle to act, but such representative may participate in such discussions in the general circle.

1.2.3 Department Circles

Each department circle shall consist of (1) either an operational leader and the members of the department circle or an operational leader and the operational leaders of the section circles and (2) at least one representative from each section circle. The department circle shall:

- (a) Determine and control the policy to achieve its aim within the limits set by the general circle.
- (b) Assign tasks to its own members to execute its own policy.
- (c) Decide, in its sole discretion, whether a new section circle should be set up or whether existing circles should be dissolved. The section circle in question may not participate in the decision to dissolve its circle. The consent of the representative of the section circle in question shall not be required for the department circle to act,

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but such representative may participate in such discussions in the department circle.

1.2.4 Section Circles

Each section circle shall consist of (1) either an operational leader and the members of the section circle or an operational leader and operational leaders of the unit circles and (2) at least one representative from each unit circle. The section circle shall:

- (a) Determine and control policy to achieve their aims within the limits set by the department circle.
- (b) Assign tasks to their own members to execute their own policy.
- (c) Decide, in its sole discretion, whether new unit circles should be set up or whether existing circles should be dissolved. The unit circle in question may not participate in the decision to dissolve its circle. The consent of the representative of the unit circle in question shall not be required for the section circle to act, but such representative may participate in the discussions in the section circle.

1.2.5 Unit Circles

Each unit circle shall consist of an operational leader and its own members. Unit circles shall:

- (a) Determine and control policy to achieve its aim within the limits set by the section circle.
- (b) Assign tasks to its own members to execute its own policy.

1.2.6 Further Subdivision

The hierarchical pattern established in sections 1.2.2-1.2.5 shall be repeated for any levels below unit circles.

1.3 Investing and Working Partners

Persons can become members of the LLC by investing money or by performing active labor or both. People or organizations that have made investments in the LLC shall be called hereafter "investing partners." Those who perform labor shall be called hereafter "working partners." Members of the general, department, section, and unit circles, and any circles below unit circles shall be working partners. A natural person can be both a working partner and an investing partner. A legal person, for example, another LLC, S corporation, or C corporation, can be an investing partner but not a working partner.

[The decision to have "working partners" or "employees" has tax and other implications that require legal advice. The intention is that everyone be able to participate in decision making on an equivalent basis. The term "partner" is not intended to infer greater authority nor "employee" less authority.]

ARTICLE 2 TOP CIRCLE

[Top Circle is the generic term for the highest governing level of the organization. It retains the circular process connotations and links to the primary sociocratic theory. Organizations may wish to adopt other terms to reflect their culture and environment.]

2.1 Composition and Number

The top circle shall consist of no less than six (6) nor more than twelve (12) members, as such number may be established from time to time by resolution of the top circle. This number shall include:

- (a) external experts,
- (b) the CEO of the LLC, and
- (c) one or more representatives of the general circle of the LLC.

2.2 External Experts

[The importance of the title "board of directors" varies amongst legal jurisdictions and not all organizations are required to have a board. When a board is required, there may also be a requirement that it be composed entirely of persons from outside the organization, the external experts. If that is the case, the following clause can be used: "The top circle shall totally encompass all the duties of the board of directors. Every meeting of the top circle shall be considered a meeting also of the board of directors. The board of directors shall not meet separately from the top circle." If a board is required by law, it may also be necessary to have a separate article defining the board and its responsibilities. If so, it can be modeled after the clauses used for the top circle.]

The external experts, chosen from outside the organization, shall represent each of the following roles:

- (a) A person with expertise in financial matters relating to the business of the LLC.
- (b) A person with expertise in the area of human resource management, small business management, or other management specialties.
- (c) A person with expertise in sociocratic (dynamic self-governance) or other technical areas in which the LLC may choose to conduct its business.
- (d) A representative of the governmental or legal community.

2.3 Separation of Roles

The CEO, elected representatives from the general circle, and the person with expertise in financial matters must be separate persons. These persons and

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other members of the top circle who are not working partners of the LLC may fulfill one or more than one of the other above roles at the same time unless this could result in a statutory, operational, or legal incompatibility.

2.4 Designation of Roles

The top circle, by resolution, shall designate the roles that each of its members fulfills.

2.5 Election, Terms, and Reimbursement

The members of the top circle, except for the financial expert, may be proposed by an external organization with consent from the CEO and elected representative(s). If such external organizations are not available, the top circle may elect persons with expertise in these areas to participate in the top circle for specified terms. The experts' terms shall be staggered and up to two years in duration, renewable at the invitation of the top circle. The top circle may choose to reimburse these experts for their services.

2.6 Resignation; Vacancies

Any member of the top circle may resign from the top circle at any time by submitting a letter of resignation to the secretary of the top circle

Any newly created membership or any vacancy occurring in the top circle for any cause may be filled by a person selected by the consent of the remaining members of the top circle and each member so elected shall hold office until the expiration of the term of office of the member of the top circle whom he or she has replaced or until his or her successor is elected and qualified.

The CEO shall be elected or re-elected at two-year intervals at the first top circle meeting after the annual investors' meeting. The representative(s) from the general circle shall be elected at intervals of up to two years on a schedule set by the general circle.

2.7 Regular Meetings

Regular meetings of the top circle may be held at such places within or without the [name of jurisdiction] and at such times as the top circle may from time to time determine, and if so determined, notices thereof need not be given.

2.8 Special Meetings

Special meetings of the top circle may be held at any time or place within or without the [name of jurisdiction] whenever called by any member of the top circle. Notice of a special meeting of the top circle shall be given by the person or persons calling the meeting at least forty-eight (48) hours before the special meeting.

2.9 Telephonic Meetings Permitted

Members of the top circle may participate in a meeting thereof by means of

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conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this operating agreement shall constitute presence in person at such meeting.

2.10 Consent Decision Required for Action

The principle of consent by all parties shall be organized as follows: At all meetings of the top circle one-half of the members of the top circle or at least 2 members of the top circle, whichever number is the greater, shall constitute a quorum for the transaction of business. All decision-making by the top circle, however, shall be according to the principle of consent; that is, whether or not a member of the top circle is present, consent is required of all the members of the top circle to all proposed decisions.

Any member of the top circle absent from a meeting of the top circle shall be notified within forty-eight (48) hours of the proposed decision(s) of the top circle. Unless the absent top circle member objects to a decision of the top circle within seventy-two (72) hours of receipt of such notice, he or she will be deemed to have consented to such decision.

If an absent top circle member objects to any action of the top circle in a timely fashion, the matter will be placed upon the agenda for the next meeting of the top circle, which meeting shall be held within seventy-two (72) hours of the receipt of such objection. Any member absent from such top circle meeting shall be deemed to have consented to the decision that the top circle reconsiders.

2.11 Organization

Meetings of the top circle shall be presided over by the president of the top circle or another person chosen by consent of the top circle. In the absence of the president or other chosen person, a chairperson chosen at the meeting shall preside over the meeting. The secretary shall act as secretary of the meeting, but in his or her absence the person presiding may appoint any person to act as secretary of the meeting.

2.12 Informal Actions

Any decision required or permitted to be made at any meeting of the top circle may be made without a meeting if all members of the top circle consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the top circle.

ARTICLE 3 EXECUTIVE OFFICERS OF THE TOP CIRCLE

3.1 Executive Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies.

The top circle shall annually elect executive officers from amongst its mem-

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bers: a president, secretary, and treasurer and it may, if it so determines, choose a chairperson (or facilitator) of the top circle and a vice chairperson (or second facilitator) of the top circle from among its members. The top circle may also choose one or more vice presidents, one or more assistant vice presidents, one or more assistant secretaries, and one or more assistant treasurers. Each such officer shall hold office until the first meeting of the top circle after the annual meeting of investing partners next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Any officer may resign his or her executive office at any time upon written notice to the secretary of the LLC. The secretary may resign at any time upon written notice to the president. The top circle may remove any officer from his or her executive office at any time without necessarily removing him or her from the top circle. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the LLC.

Any number of executive offices may be held by the same person unless prohibited by governing law. The top circle at any regular or special meeting may fill any executive officer vacancy occurring in any office of the LLC by death, resignation, removal, or otherwise for the unexpired portion of the term.

3.2 Power to Require Security

The top circle may require any of its members, and any officer, agent, working member, or employee of the LLC to give security for the faithful performance of his or her duties.

ARTICLE 4 CIRCLE MANAGEMENT

4.1 General Provisions

Management of all circles of the LLC with the exception that management of the top circle shall be in accordance with the following procedures only to the extent that such procedures are not inconsistent with Article 2 or Article 3 hereof, or any other provisions of this operating agreement, the articles of organization, or the laws of [name of jurisdiction].

4.1.1 Circle Regulations

Each circle shall be a separate organ of the LLC and shall be empowered to draft its own regulations with respect to the tasks, authority, and responsibilities of the circle, which regulations shall not be in conflict with this operating agreement or any regulations that the top circle may adopt.

4.1.2 Assisting Circles

A circle is authorized to form assisting (or helping) circles to prepare decision-making recommendations for the circle. The assisting circle may be composed of persons from the circle, other circles, and external

advisors.

4.1.3 Circle Decisions and Limits

Circles may make decisions within certain limits agreed on in the next higher circle; individual members may make independent decisions within the limits drawn up by their own circles.

4.2 Decision Making

4.2.1 The Principle of Consent

Decision-making shall be in accordance with the principle of consent or "no objection." Decision making does not require consent to be used for every decision of the circle, however, but it must be used to establish an alternative means of decision making for a specific decision or for a specific class of decisions.

4.2.2 Objections

Should there be a paramount objection to a decision, arguments for the objection must be given. An objection without reasoned argument will not be considered.

4.2.3 Second Meetings

If a circle is unable to reach a decision on a particular matter, a new meeting of the circle shall be convened after at least forty-eight (48) hours, with the same subject on the agenda.

4.2.4 Referring Decisions

If a circle is unable to reach a decision on a particular matter in a second meeting of the circle, the chairperson may refer the matter to the next higher or lower circle for decision or recommendation.

4.2.5 Annual Decision-Making Audit

An independent auditor shall review the decision-making process in each circle annually and shall report to the top circle whether the decision making of the circles conforms to this operating agreement.

4.2.6 Assuming Decision-Making Authority

The next higher circle is responsible for assuring that decision making in a circle functions according to this operating agreement. If the next higher circle concludes that the decision-making within a circle does not function according to this agreement, the next higher circle may take over the decision making of that circle on an interim basis.

The circle shall continue to make recommendations to the next higher circle concerning its area of responsibility. The next higher circle shall take such action(s) as it deems necessary to re-establish the circle's

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performance according to sociocratic (dynamic self-governance) principles as soon as possible. The next higher circle shall restore decision-making authority to the circle as soon as either the next higher circle or the independent auditor determines that decision-making is functioning according to sociocratic (dynamic self-governance) principles.

4.3 Selection of Persons

4.3.1 Officers and Representatives

Each circle shall elect a chairperson (or facilitator) of circle meetings and a secretary from amongst its members. Each circle shall also elect one or more representatives of the circle in the next higher circle, whether or not that person is a member of the circle, provided the representative is in some way connected to the LLC. These elections shall be conducted annually, or as deemed necessary by the circle, at a meeting convened for this purpose, according to the consent principle and after open discussion.

4.3.2 Multiple Functions

Persons may fulfill more than one function at the same time, unless this could result in a statutory, operational, or legal incompatibility, provided that the operational leader (elected by the next higher circle) and the representative may not be the same person.

4.3.3 Procedures for Appointment and Dismissal

Each circle shall determine procedures for the appointment and dismissal of members of the circle, in accordance with the law, this operating agreement, and the articles of organization. A circle shall make decisions as to the appointment or dismissal of its members only after the person involved has been given an opportunity to present his or her arguments. However, the person involved may not participate in the making of this decision.

In the absence of a written agreement to the contrary between an individual working partner and the LLC, these procedures shall not constitute a contract between any person and the LLC and all working partners of the LLC shall continue as working partners at the will of the LLC.

4.3.4 Objections to Appointments or Dismissals

In the event a circle objects to the appointment of or seeks to dismiss a representative of the next lower circle, the circle shall submit objections to the next lower circle concerning the functioning of its representative in the circle. Should the consideration of these objections not result in consent between the higher circle and the next lower circle, the higher circle may deny the representative the right to represent the lower circle in the higher circle.

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Such denial of representation is an extreme remedy and the higher circle should only undertake it as a final resort and should take all necessary action to restore representation of the next lower circle as soon as possible.

4.4 Circle Meetings

4.4.1 Frequency

Circles shall meet at regular intervals, at least six times per year.

4.4.2 Convening and Notice

Regular circle meetings shall be convened by the chairperson (or facilitator) of the circle. All members shall receive notice of the meeting, the agenda, and any relevant information necessary to make decisions on matters to be discussed at the meeting within a reasonable time prior to the meeting.

4.4.3 Special Meetings

The chairperson shall convene a special meeting within seven (7) days of a request therefore from any member of the circle.

Should the chairperson fail to convene such a meeting within seven (7) days after the receipt of such a request, the circle member who made the request may convene the meeting.

4.4.4 Members Present (Quorum)

It is not necessary for all the members of the circle to be present to hold a meeting, however, consent is required from all members of a circle before a decision can take effect. Each circle shall establish its own written policy defining a quorum for conducting business and its procedures for obtaining consent from absent members.

4.4.5 Delegation of Participation

Members who are unable to be present can delegate their right to participate in decision making to another member of the circle. The right to participate, however, does not constitute a proxy consent or veto. The delegated right to participate is the right to present arguments on behalf of another circle member.

4.4.6 Recording Decisions

Any decision made during a circle meeting shall be recorded in circle minutes or notes to be circulated to all members of the circle and to other circles with which the circle is linked within three (3) days of the meeting in the format determined by the organization.

4.4.7 Amending or Repealing a Delegated Decision

Amending or repealing a delegated decision is possible provided the

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consent of the circle involved has been obtained.

ARTICLE 5 COMPENSATION AND PROFIT SHARING

5.1 Fixed Compensation

Both investing partners and working partners engaged in active operations shall receive fixed compensation to be reimbursed only from earnings from operations. The fixed part of the investing partners' reimbursement will be calculated at the end of fiscal year at the then prevailing prime lending rate. Working partners will be reimbursed throughout the business year at a fixed rate analogous to wages or salaries.

5.2 Variable Compensation

Both investing partners and working partners will receive variable reimbursements to be reimbursed only from earnings from operations. The reimbursements will vary depending on profitability. Variable compensation will be in the form of short-term measurement (STM) and long-term measurement (LTM) payments. STM payments will be made only when profits for the month exceed the targeted profit percentage. If profits for a month fall below the targeted profit percentage, that shortfall must be covered before any STM payments can be made. LTM payments will be made once or twice annually at the discretion of the top circle.

5.3 Determining Fixed and Variable Payments

5.3.1 At least annually, the top circle shall determine the amount targeted for company reserves and the targeted profit percentage.

5.3.2 At least at the end of each fiscal year, the top circle or person(s) delegated by the top circle will normally deduct the targeted reserve from the profits, calculate the amount of fixed payments due to investors per Section 7.1, and subtract that amount and the amount of the targeted reserve from the profits available for variable payments to the parties. The variable payments, however, are so important to the measurement process, a key component of the LLC management, the top circle can choose to make variable payments before fully paying investors' fixed payments.

5.3.3 The top circle or person(s) delegated by the top circle will calculate an STM payment for the investing and working partners each month and an LTM payment once or twice a year.

5.3.4 The top circle shall decide whether to have the company pay taxes on retained earnings at the corporate tax rate or to pass all earnings through to the partners.

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OTHER ARTICLES

[Additional articles may be necessary to address such issues as indemnification, conflict of interest, fiscal year, corporate seal, and so forth. Care must be taken to ensure that these clauses do not contradict or undermine the provisions of Articles 1 through 6.]

ARTICLE X MISCELLANEOUS

Amendment of This Operating Agreement

This operating agreement may be altered or repealed and new agreements made by the top circle applying the principle of consent in accordance with the provisions of these agreements, with a minimum of thirty (30) days notice to all members of the LLC including investing partners, working partners, and board of directors members of intent to amend this operating agreement. The purpose of such notice shall be to allow all levels of the circle structure, including the investing partners, time to call special meetings, if necessary, to deliberate, and to select representatives to attend the deliberations of the next higher circle.

ADDENDUM CONDUCT OF MEETINGS OF INVESTING PARTNERS

ARTICLE 1 MEETINGS OF INVESTING PARTNERS

Meetings of investing partners shall be conducted in accordance with the sociocratic (dynamic self-governance) method. By consent, the investing partners may choose methods and structures of decision-making other than consent for a meeting of investing partners.

ARTICLE 2 NOTICE OF MEETINGS

Whenever the investing partners are required or permitted to take any action at a meeting, a written notice of the meeting shall be given to investing partners which shall state the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the articles of organization, or these operating agreements, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to the investing partners. If mailed, such notice shall be deemed to be given when deposited in the email or mail, postage prepaid, directed to the investing partner at its address as it appears on the records of the LLC.

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2.1 Annual Meeting of Investing Partners

The investing partners shall meet annually for the purpose of electing a representative(s) to the top circle and determining the date and time of the next meeting. Only persons who have made monetary investment in the LLC plus the CEO plus the representative(s) from the general circle to the top circle shall participate in said meeting.

2.2 Special Meetings of Investing Partners

Special meetings of the investing partners may be called with at least 15 days notice by one or more of the investing partners, CEO, or elected representative to the top circle. Only the investing partners, the CEO, and the representative(s) to the top circle from the general circle shall be entitled to participate in such meetings. Special meetings will be for the sole purpose of considering the removal and/or replacement of the investing partners' representative(s) to the top circle.

2.3 List of Investing Partners Entitled to Participate in Annual and Special Meetings of Investing Partners

The secretary of the top circle, upon notice of an annual or special meeting of the investing partners, shall prepare and make, at least ten (10) days before such meeting, a complete list of the investing partners entitled to participate in the meeting, arranged in alphabetical order, and showing the address of each investing partner and the percentage of equity registered in the name of each investing partner. Such list shall be open to the examination of any investing partner in a designated electronic location.

ARTICLE 3 QUORUM

Except as otherwise provided by law, the articles of organization, or this operating agreement, at each meeting of the investing partners the presence in person or by electronic means of a person or persons representing at least one-half of the total investment in the LLC plus the CEO or a Representative of the general circle shall constitute a quorum. The investing partners may, at their sole discretion, form a legal entity.

ARTICLE 4 ORGANIZATION OF INVESTING PARTNERS MEETING

Meetings of the investing partners shall be presided over by the CEO, by a representative of the general circle, or by another person elected at the meeting by consent. The meeting attendees shall elect a secretary or direct the CEO to appoint a person to act as secretary of the meeting.

ARTICLE 5 PARTICIPATION IN MEETINGS

Each investing partner in attendance shall be entitled to participate in the consent decision-making process in the investing partners meeting. Members

who are unable to be present can delegate their right to participate in decision making to another member of the investing partner's circle. The right to participate, however, does not constitute a proxy to consent or veto. The delegated right to participate is the right to present arguments on behalf of another circle member.

ARTICLE 6 FIXING DATE FOR DETERMINATION OF INVESTING PARTNER OF RECORD

6.1 Fixed Record Date

In order that the LLC may determine the investing partners entitled to notice of or to participation in any meeting of investing partners or any adjournment thereof; or entitled to receive payment of any funds or other distribution or allotment of any rights; or entitled to exercise any rights in respect of any change, conversion, or exchange of partnership equity; or for the purpose of any other lawful action, the top circle may fix a record date. The record date shall not precede the date upon which the resolution fixing the record date is adopted by the top circle. The record date

- (a) shall not be more than sixty (60) nor less than ten (10) days before the date of the next scheduled meeting of the investing partners;
- (b) nor in the case of any other action, it shall not be more than sixty (60) days prior to such other action.

6.2 No Fixed Record Date

If no record date is fixed,

- (a) the record date for determining investing partners entitled to notice of or to participate at a meeting of investing partners shall be at the close of business on the day preceding the day on which the meeting is held;
- (b) the record date for determining investing partners for any other purpose shall be at the close of business on the day preceding the day on which the top circle adopts the resolution relating thereto.

A determination of investing partners of record entitled to notice of or to participate at a meeting of investing partners shall apply to any adjournment of the meeting; provided, however, that the top circle may fix a new record date for the adjourned meeting.

ARTICLE 7 LIST OF INVESTING PARTNERS ENTITLED TO PARTICIPATE

The person or persons responsible for calling an annual or special meeting of the investing partners must give the secretary of the top circle notice of the meeting at least fifteen (15) days in advance of the date of the meeting.



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