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THE BUSINESS COURT OF TEXAS
EIGHTH DIVISION

RIVERSIDE HOMEBUILDERS, LTD.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 26-BC08B-0011
	§	
FG ALEDO DEVELOPMENT, LLC,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER ON COMPETING MOTIONS FOR SUMMARY JUDGMENT REGARDING MANAGERIAL AUTHORITY

¶ 1. Before the Court are two competing motions for summary judgment: Third-Party Defendant Timothy H. Fleet's Partial Motion for Summary Judgment on Declaratory Judgment Claims, filed September 8, 2026 ("Fleet's MSJ"); and FG Aledo Development, LLC ("FG Aledo") and KTFW Investments, Inc.'s ("KTFW") (together, the "KTFW Parties") Motion for Partial Summary Judgment Establishing KTFW's Authority to Manage FG Aledo, and Request for Oral Hearing, filed September 15, 2026 ("KTFW's MSJ").

¶ 2. Having considered the parties' briefing, the summary-judgment evidence, the applicable law, and the arguments of counsel, the Court **DENIES** Fleet's MSJ and **GRANTS IN PART** KTFW's MSJ.

INTRODUCTION

¶ 3. FG Aledo has two Members.[1] Each owns 50% of its Class B Membership Interests, and each claims the right to manage the Company. KTFW has served as Manager since FG Aledo's formation in 2014. On August 12, 2026, Fleet purported to remove KTFW for cause and appoint himself as its successor. KTFW contends that neither action was effective. Each side is half right.

¶ 4. The competing motions present three questions under FG Aledo's Company Agreement: what vote is required to remove the Manager; what vote is required to appoint a successor Manager; and whether either side has established as a matter of law that cause existed—or did not exist—to remove KTFW.

¶ 5. The first two questions turn entirely on the text of the Company Agreement and can be decided as a matter of law. Section 9.5 permits removal for cause by the unanimous vote of the Members other than the Manager. Because Fleet was the only non-Manager Member, his vote satisfied that requirement. Appointment is governed by a different, two-part rule. First, the successor must be

[1] Capitalized terms not otherwise defined in this Opinion have the meanings given them in FG Aledo's March 28, 2014 Company Agreement (the "Company Agreement" or "Agreement").

appointed by Members owning a majority of the Class B Membership Interests in the Company. Second, a Member affiliated with the Manager being replaced may not vote. So although KTFW could not vote, its interest still counted in the total Class B Membership Interests against which the majority is measured. Fleet owns exactly half of those interests. Half is not a majority, so his self-appointment was ineffective.

¶ 6. The third question cannot be resolved from the text alone. To establish cause for removing KTFW, Fleet relies on an April 2026 Tax Distribution that KTFW authorized while the Company allegedly owed substantial debts to non-Members. Fleet's argument assumes that Article VIII bars any Tax Distribution whenever any Company obligation remains outstanding. It does not. Read as a whole, Article VIII requires obligations then payable to be paid or reasonably reserved for before a Tax Distribution is made. The record presents genuine issues of fact about which obligations were payable, what reserves existed, whether certain intercompany obligations were valid, and whether any breach remained uncured. Neither side has conclusively established the existence or absence of cause.

¶ 7. In sum, this Opinion concludes that Fleet's vote satisfied Section 9.5's voting requirement for removal, but it does not decide whether cause existed. It also decides that Fleet's attempt to appoint himself was ineffective and that he did not become Manager. Nothing herein displaces KTFW as the incumbent Manager pending trial.

BACKGROUND FACTS

A. FG Aledo's Ownership and Management Structure

¶ 8. FG Aledo is a Texas limited liability company formed in 2014.[2] The Company is governed by a March 28, 2014 Company Agreement that designated KTFW as FG Aledo's Manager.[3] Kimberly Gill ("Gill") is KTFW's sole owner, director, and officer.[4]

¶ 9. At formation, FG Aledo had one Class A Member (Aledo Investor Fund LP) and two Class B Members (KTFW and Fleet).[5] Section 8.3 provided that the Class A Member's interest would be cancelled and reallocated equally to the Class B Members once the Class A Member received its Preferred Return.[6] That occurred, leaving Fleet and KTFW as FG Aledo's only Members, each owning 50% of the Class B Membership Interests.[7]

¶ 10. The Company Agreement contains three voting rules relevant to this dispute: a default rule for Member action, a special rule for removing the Manager, and another special rule for appointing a successor. Section 9.2(b) supplies the default rule. It provides that when the Agreement calls for Member "approval," "consent," "determin[ation]," "ratification," or "any similar reference," the action

[2] Fleet's MSJ 6.
[3] Company Agreement § 1.1.
[4] Fleet's MSJ 6.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 7.

requires the agreement of Members owning at least 51% of the aggregate Membership Interests.

¶ 11. Removal of the Manager follows a different rule. Section 9.5 provides that, "[n]otwithstanding anything seemingly to the contrary contained herein," the Manager may be removed for cause by "unanimous vote of Members other than the Manager." Cause, in turn, is limited to four enumerated grounds, including a Manager's failure to perform an obligation or duty under the Company Agreement when that failure continues uncured for 20 days.

¶ 12. Appointment of a successor is governed by a third rule. The second sentence of Section 9.5 provides, "Upon the resignation, dissolution or removal of the Manager, the Members owning a majority of the Class B Membership Interests in the Company shall appoint a successor Manager; provided, however, that any Member which is affiliated with the Manager being replaced shall not be entitled to vote in such election." Thus, the first sentence of Section 9.5 authorizes removal by the unanimous vote of the Members other than the Manager, while the second sentence provides that a successor may be appointed by Members owning a majority of all Class B Membership Interests, though Members affiliated with the removed Manager are prohibited from voting.

B. The Distribution Provisions

¶ 13. Article VIII governs how FG Aledo distributes its cash. Section 8.1 defines Net Cash Flow and prescribes the order in which it is applied or distributed. Under that priority of payment, debts and obligations owed to non-Members are paid before Tax Distributions to Members. Section 8.1 also gives the Manager discretion to establish reasonable reserves and determine the amount of Net Cash Flow available for distribution.

¶ 14. Section 8.2 then requires the Company to make annual Tax Distributions, subject to the determination of Net Cash Flow under Section 8.1. Section 9.2(a) requires Member approval for distributions not made in strict accordance with Article VIII.

C. The Tax Distribution and Fleet's Attempted Change in Management

¶ 15. On April 9, 2026, KTFW authorized FG Aledo to make Tax Distributions of $500,000 each to Fleet and KTFW, with KTFW's share paid to Gill.[8] Fleet returned his distribution in early May and demanded that KTFW do the same.[9] Fleet renewed that demand through counsel on May 22, 2026. He contends KTFW failed to comply within Section 9.5's cure period.[10]

[8] *Id.* at 9.
[9] *Id.* at 10.
[10] *Id.*

¶ 16. On August 12, 2026, Fleet signed a written consent purporting to remove KTFW for cause and, in the same document, appoint himself successor Manager.[11] KTFW disputed both actions and continued to exercise managerial authority.[12] Fleet now seeks declarations that both actions were valid under Section 9.5. The KTFW Parties seek the opposite declaration—that Fleet did not validly remove KTFW or appoint himself and that KTFW remains the lawful Manager.

LEGAL STANDARD

¶ 17. Summary judgment is governed by Texas Rule of Civil Procedure 166a. A movant "bears the burden to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law."[13] The nature of that burden varies by posture. A plaintiff must conclusively establish all essential elements of its claim.[14] A defendant must either conclusively negate at least one element of the plaintiff's claim or prove all elements of an affirmative defense.[15]

¶ 18. In deciding whether a fact issue exists, a court takes as true all evidence favorable to the nonmovant, indulges every reasonable inference in the nonmovant's favor, and resolves any doubts against the movant.[16] The court may not weigh the

[11] *Id.*
[12] *Id.* at 11.
[13] *ConocoPhillips Co. v. Koopmann*, 547 S.W.3d 858, 865 (Tex. 2018) (citing TEX. R. CIV. P. 166a(c)).
[14] *See MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986).
[15] *Stanfield v. Neubaum*, 494 S.W.3d 90, 96 (Tex. 2016).
[16] *ConocoPhillips*, 547 S.W.3d at 865.

evidence or make credibility determinations at this stage; its role is limited to deciding whether a genuine fact issue exists for trial.[17]

¶ 19. Questions of contract interpretation are especially well suited for summary judgment.[18] In construing a contract, the Court's objective is to ascertain and give effect to the parties' intent as expressed in the agreement itself.[19] To do so, the Court considers the contract as a whole, harmonizing and giving effect to all provisions so that none are rendered meaningless.[20]

¶ 20. This analysis begins—and, where the language permits, ends—with the contract's plain text.[21] If the language is susceptible to a definite or certain legal interpretation, it is unambiguous and must be enforced as written.[22]

MOTIONS FOR LEAVE

¶ 21. Before turning to the merits, the Court addresses the parties' requests to supplement the summary-judgment record.

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[17] *Huckabee v. Time Warner Ent. Co. L.P.*, 19 S.W.3d 413, 422–23 (Tex. 2000); *see also Ortega v. Pean*, No. 01-18-00249-CV, 2019 WL 1560859, at *10 (Tex. App.—Houston [1st Dist.] Apr. 11, 2019, pet. denied) ("[I]f a summary judgment motion involves the credibility of affiants, or the weight to be given to evidence, the motion should not be granted." (internal quotation marks omitted)).

[18] *See Hallmark v. Port/Cooper-T. Smith Stevedoring Co.*, 907 S.W.2d 586, 590 (Tex. App.—Corpus Christi 1995, no writ); *Tellepsen Builders, L.P. v. Kendall/Heaton Assocs., Inc.*, 325 S.W.3d 692, 696 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

[19] *Italian Cowboy Partners v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011); *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003).

[20] *Italian Cowboy*, 341 S.W.3d at 333.

[21] *Id.* (citing *Progressive Cnty Mut. Ins. Co. v. Kelley,* 284 S.W.3d 805, 807 (Tex. 2009)).

[22] *J.M. Davidson*, 128 S.W.3d at 229; *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

¶ 22. The KTFW Parties seek leave to submit recently produced accounting records purportedly showing that Fleet received more than $62 million from FG Aledo while the Company allegedly owed the intercompany obligations on which Fleet now relies. They characterize $26 million of those payments as usurious interest. More broadly, they argue that Fleet's receipt of substantial payments while those obligations remained outstanding undermines his present position that the obligations prohibited KTFW's April 2026 Tax Distribution and supplied cause for removal.[23]

¶ 23. Fleet responds that the usury theory is baseless and falls outside the issues presented by the pending motions. He also contends that FG Aledo owed millions of dollars to non-Members regardless of any amount owed to him.[24] If the Court considers the new evidence, Fleet alternatively requests leave to submit responsive evidence, including declarations from Adam Ackermann and Fleet and their supporting exhibits.

¶ 24. Because both sets of materials bear on the disputed question of cause, and both sides have had a fair opportunity to address them, the Court finds good cause to consider those materials under Rule 166a(j)(6). The Court therefore **GRANTS** the KTFW Parties' motion for leave and **GRANTS** Fleet's cross-motion for

[23] KTFW's Mot. for Leave 8.
[24] Fleet's Cross-Mot. for Leave 4–5.

leave. The summary-judgment record is supplemented with Exhibits 13 through 17 to the KTFW Parties' motion for leave, the October 19 declarations of Ackermann and Fleet, and the exhibits attached to those declarations.

¶ 25. Two limits apply. First, the Court expresses no view on the KTFW Parties' usury theory, which neither summary-judgment motion presents. Second, the KTFW Parties did not request leave to add the exhibits first attached to their October 20, 2026 reply in support of their motion for leave. The Court therefore has not considered those exhibits.

OBJECTIONS TO STERN AND ACKERMANN DECLARATIONS

¶ 26. The Court next considers the KTFW Parties' objections to the declarations of Leonard A. Stern, II and Ackermann filed in support of Fleet's MSJ.

A. Stern declaration

¶ 27. Stern, who drafted the Company Agreement in 2014, submitted a declaration offering his interpretation of several of its provisions.[25] The KTFW Parties raise three objections. They contend the declaration: (1) offers an interpretation of the Agreement that contradicts its plain language, in violation of the parol evidence rule; (2) offers testimony from an interested witness that cannot be readily controverted under Rule of Civil Procedure 166a(c); and (3) offers

[25] Fleet's MSJ App. 186–87.

improper "back-door 'expert' testimony on questions of law," in violation of Rule of Evidence 702.

¶ 28. Their first objection is well taken. Because the Company Agreement is unambiguous on the voting questions presented, Stern's testimony cannot be used to contradict its text or ascribe to it a meaning that its words will not bear.[26] His status as the drafter does not change that rule. Stern was not a party to the Agreement and his declaration offers only his own understanding—twelve years after the fact—of what he meant the language to accomplish. Contractual intent is objective; what matters is what the parties wrote, not what the drafter privately intended.[27]

¶ 29. Because the Court sustains the first objection, it need not reach the remaining ones. Stern's declaration is **STRICKEN** from the summary-judgment record and will not be considered.

[26] *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 764 (Tex. 2018).

[27] "Parties cannot rely on extrinsic evidence to give the contract a meaning different from that which its language imports, add to, alter, or contradict the terms contained within the agreement itself, make the language say what it unambiguously does not say, or show that the parties probably meant, or could have meant, something other than what their agreement stated." *Id.* at 769 (internal quotation marks and footnotes omitted).

B. Ackermann declaration

¶ 30. The KTFW Parties also object to Ackermann's declaration as conclusory and unsupported by the underlying facts and evidence. More particularly, they object to each paragraph beginning with "[a]s of":

> "As of April 9, 2026, FG Aledo owed $3,559,616.46 to 350 Lyons. This number does not include the interest that had accrued from March 31, 2026 to that date.
>
> "As of April 9, 2026, FG Aledo owed $1,778,815.35 to 170 Northstar Ranch. The amount owed to this entity does not accrue interest.
>
> "As of April 9, 2026, FG Aledo owed $96,000.00 to Northstar Ranch. The amount owed to this entity does not accrue interest.
>
> "As of April 9, 2026, FG Aledo owed $8,787,123.50 to FWFW Holdings. This number does not include the interest that had accrued from March 31, 2026 to that date.
>
> "As of today, much of this debt is still outstanding.

¶ 31. The KTFW Parties complain that the challenged statements do not identify the underlying obligation, maturity date, payment term, or calculation for the asserted balances. Nor do the statements explain whether any amount was actually payable on April 9. Those omissions are critical, they say, because the issue is not simply whether an obligation appeared on a company ledger, but whether the obligation had to be paid or reserved for before KTFW made a Tax Distribution.

¶ 32. Fleet responds that Ackermann supplied an adequate foundation by stating that he serves as CFO of Lackland Holdings, has kept FG Aledo's financial records in that role, and has personal knowledge of the matters addressed in his

declaration.[28] This misses the point, however. While those general assertions establish Ackermann's familiarity with the records, they do not explain how the challenged balances were calculated or whether the amounts were payable on April 9, 2026. Expressing familiarity with the books is not a substitute for providing the underlying facts behind the numbers.

¶ 33. To constitute competent summary-judgment evidence, a declaration must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the declarant is competent to testify to the matters stated.[29] A declaration that states conclusions without supporting facts is not competent evidence.[30] Ackermann's declaration is conclusory in exactly that way. It attaches no records, shows no calculations, and says nothing about when any amount came due. Its statements that FG Aledo "owed" specific amounts are conclusions, not evidence. The objections are therefore **SUSTAINED**, and the challenged statements are **STRICKEN** from the record.

¶ 34. Fleet alternatively requests leave to substitute Ackermann's October 5 declaration and accompanying schedule.[31] That later declaration authenticates the

[28] Fleet's Combined Resp. & Reply 25.
[29] *See Kerlin v. Arias*, 274 S.W.3d 666, 668 (Tex. 2008) (applying rule to affidavits); TEX. R. EVID. 602; TEX. CIV. PRAC. & REM. CODE § 132.001(a) (stating that unsworn declaration may be used in lieu of affidavit).
[30] *Pipkin v. Kroger Tex., L.P.*, 383 S.W.3d 655, 670 (Tex. App.—Houston [14th Dist.] 2012, pet. denied); *Olivares v. Brown & Gay Eng'g, Inc.*, 401 S.W.3d 363, 372 (Tex. App.—Houston [14th Dist.] 2013), *aff'd*, 461 S.W.3d 117 (Tex. 2015).
[31] Fleet's Combined Resp. & Reply 26 & App. 40–42.

schedule and cures the original declaration's principal foundation defect, but still does not establish whether the listed amounts were payable on April 9. Nevertheless, the Court **GRANTS** Fleet's request and has considered the October 5 Ackermann declaration under Rule 166a(j)(6).

ANALYSIS

A. Fleet's vote satisfied Section 9.5's voting requirements for removal.

¶ 35. The Court begins with the vote required to remove KTFW. Section 9.5 provides: "Notwithstanding anything seemingly to the contrary contained herein, by unanimous vote of Members other than the Manager, the Manager may be removed 'for cause.'" Fleet contends that his vote alone satisfied this requirement because he was the only Member other than KTFW.[32] The Court agrees, at least as to the voting requirement. The removal sentence plainly identifies who may vote—the Members other than the Manager—and requires all of them to agree. On August 12, 2026, Fleet was the only Member eligible to vote, making his vote unanimous. Whether cause existed is a separate question.

¶ 36. The KTFW Parties read the Agreement differently. They do not dispute that Fleet's vote was unanimous among the Members other than the Manager. They insist, instead, that unanimity under Section 9.5 is only part of the required vote. In

[32] Fleet's MSJ 16.

their view, Section 9.2(b) imposes an additional ownership threshold applicable to all Member actions: those Members must also own at least 51% of the aggregate Membership Interests.[33] Because Fleet owns only 50%, they argue that he satisfied Section 9.5 but not Section 9.2(b).

¶ 37. The text does not support stacking Section 9.2(b)'s threshold on top of Section 9.5's. Section 9.2(b) applies only when the Agreement calls for Member "approval," "consent," "determin[ation]," "ratification," or "any similar reference." The removal sentence in Section 9.5 uses none of the listed terms and, more importantly, does not leave the required vote unstated. Instead, it sets its own threshold (a "unanimous vote") among its own electorate ("Members other than the Manager"). Requiring those Members also to own 51% of the Company would add a condition the parties did not include.

¶ 38. As written, the two provisions do not conflict or even compete for the same ground. Each has a distinct role. Section 9.2(b) supplies the general rule for Member action, while Section 9.5 supplies the specific rule for removing the Manager. Additionally, even if they could be read to conflict, the Agreement makes clear which provision controls. The removal sentence in Section 9.5 opens with "[n]otwithstanding anything seemingly to the contrary contained herein," and a

[33] KTFW's MSJ 11.

clause of that kind tells the reader which provision governs when two conflict.[34] The provision it introduces "must be given effect regardless of any contrary provisions of the contract."[35] Thus, if any tension exists, Section 9.5 prevails.

¶ 39. The KTFW Parties also contend that the phrase "unanimous vote of Members" necessarily requires more than one voter.[36] The Court sees it differently. Unanimity asks whether everyone who voted agreed, without reference to how many people were entitled to vote.[37] The Company Agreement, moreover, forecloses any argument based on the plural "Members." It expressly provides that "all plural words shall include the singular," such that the term "Members" would encompass a single Member.[38] Fleet was the only Member eligible to vote, and he voted for removal. His vote was therefore unanimous.

¶ 40. Finally, the Agreement's own ownership structure confirms this reading. Section 8.3 contemplates that KTFW and Fleet would each own 50% of the Company once the Class A interest was cancelled.[39] The ensuing 50/50 split was therefore not an unforeseen circumstance; it was a result the Agreement anticipated.

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[34] *See G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 531–32 (Tex. 2015).
[35] *Helmerich & Payne Int'l Drilling Co. v. Swift Energy Co.*, 180 S.W.3d 635, 643–44 (Tex. App.—Houston [14th Dist.] 2005, no pet.).
[36] KTFW's MSJ 12–13.
[37] *Unanimous*, BLACK'S LAW DICTIONARY (12th ed. 2024) ("Agreeing in opinion; being in complete accord."); *Unanimous*, MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/unanimous (last visited Nov. 4, 2026) ("being of one mind").
[38] Company Agreement § 14.6.
[39] *Id.* § 8.3.

From then on, Fleet, the only Member eligible to vote on KTFW's removal, could never reach 51%. If Section 9.2(b)'s threshold applied, Section 9.5 would identify gross negligence, fraud, and willful misconduct as grounds for removal, yet provide no means of removing KTFW on any of them. That is not a reasonable reading.

B. Fleet's vote did not satisfy the requirement for appointing a successor.

¶ 41. Removal is only half of Section 9.5. The section's next sentence addresses what happens after the Manager leaves: "Upon the resignation, dissolution, or removal of the Manager, the Members owning a majority of the Class B Membership Interests in the Company shall appoint a successor Manager; provided, however, that any Member which is affiliated with the Manager being replaced shall not be entitled to vote in such election."

¶ 42. Although the removal and appointment sentences sit back to back in the same section, they measure the vote in entirely different ways. Removal requires only unanimity among the Members other than the Manager, regardless of how much (or little) of the Company they own. Appointment, by contrast, requires support from Members owning a majority of the Class B Membership Interests, but bars any Member from voting if they are affiliated with the Manager being replaced. The parties' disagreement centers on that last clause. Does it merely prevent KTFW from voting, or does it also remove KTFW's 50% interest from the total against which the required majority is measured?

¶ 43. The KTFW Parties contend that KTFW's disqualification affects only its right to vote, while its 50% interest remains part of the total Class B Membership Interests against which the majority is measured. Because Fleet owns only 50% of those interests, they argue he lacks the majority required to appoint a successor.[40] Fleet responds that the proviso in Section 9.5 "redefines the eligible electorate so that the majority is measured only among the Members who remain qualified to vote."[41] In his view, KTFW's 50% interest drops out of the calculation entirely, leaving Fleet as the sole eligible voter and his 50% interest as all of the interests to be considered. Between these competing views, the Court agrees with the KTFW Parties.

¶ 44. Fleet's reading is contrary to the plain language of the appointment clause. The clause measures the required vote by ownership of "the Class B Membership Interests in the Company." It does not refer to the interests held by "remaining" Members, "eligible" Members, or Members entitled to vote. Nor does the proviso change that measure. It says only that a Member affiliated with the Manager being replaced "shall not be entitled to vote." KTFW's disqualification prevents it from voting its 50% interest, but that interest remains a Class B Membership Interest "in the Company" and therefore remains part of the total

[40] KTFW's MSJ 14–15.
[41] Fleet's MSJ 24.

against which the majority is measured. In short, KTFW's 50% cannot be counted in the numerator but remains in the denominator used to determine whether the appointment received majority support.

¶ 45. Section 11.3 illustrates how the parties would have written Section 9.5 had they intended what Fleet suggests. Addressing a Manager's bankruptcy, insolvency, death, termination, or dissolution, Section 11.3 allows the Company to continue upon "the affirmative vote of a majority in interest of the *remaining* Class B Members" and directs that a successor be selected "by vote of the *remaining* Class B Members."[42] By repeatedly using "remaining," Section 11.3 narrows both who may vote and the interests against which the majority is measured. Section 9.5 uses no comparable language. It measures the majority against the Class B Membership Interests in the Company, not only those held by Members eligible to vote.

¶ 46. Fleet's last textual argument rests on the opening words of Section 9.5—"Notwithstanding anything seemingly to the contrary contained herein." He reads that clause as a preface to the entire section, shielding appointment as well as removal from Section 9.2(b).[43] That clause, however, does not modify all of Section 9.5. It belongs to the first sentence, and that sentence addresses removal alone. The next sentence does something different. It tells the Members how to fill a vacancy,

[42] Company Agreement § 11.3 (emphasis added).
[43] Fleet's MSJ 22.

whether that vacancy arises by resignation, dissolution, or removal. Only one of those events involves removal at all. The natural reading, then, is to confine the notwithstanding clause to the removal rule that it introduces.

¶ 47. The rest of the Company Agreement bears this out. Throughout the Agreement, the parties used notwithstanding clauses in two distinct ways. When they wanted a notwithstanding clause to govern a series of provisions, they wrote it as a lead-in to the whole series.[44] When they wanted the clause to govern a single sentence, they placed it at the front of that sentence alone.[45] Section 9.5 follows the latter pattern. Its opening clause gives the removal rule priority over conflicting provisions. It does not carry that priority into the next sentence.

¶ 48. In the end, though, the scope of the notwithstanding clause does not decide this question. Fleet's appointment fails with or without Section 9.2(b). Section 9.5 itself requires a majority of the Class B Membership Interests, and Fleet has exactly half. Section 9.2(b) requires at least 51% of the aggregate Membership Interests, and Fleet has 50%. Measured either way, he lacked the authority to appoint himself.

[44] Company Agreement § 7.2 ("Notwithstanding Section 7.1, the following special allocations shall be made . . . ."); *id.* § 9.2(a) (introducing the list of "Major Decisions").
[45] *Id.* §§ 10.1, 11.3, 11.5.

C. Whether cause existed cannot be resolved on summary judgment.

¶ 49. Having resolved the voting questions, the Court turns to whether KTFW was validly removed for cause. Both sides seek summary judgment on that question, but neither has carried its burden.

1. Fleet's asserted grounds for cause

¶ 50. Section 9.5 permits the Manager to be removed only "for cause" and limits cause to four enumerated grounds. Fleet's removal notice invoked two of those: (i) proven gross negligence, fraud, or wanton or willful misconduct; and (ii) failure to perform an obligation or duty under the Company Agreement when the failure continues for 20 days after written notice.[46] In his summary judgment briefing, however, Fleet relies only on the latter ground.[47]

¶ 51. Fleet contends that KTFW violated Article VIII by authorizing a $500,000 Tax Distribution to KTFW while FG Aledo still owed debts to non-Members. He further contends that the violation remained uncured because KTFW did not return the money within 20 days after his written demand.[48] Fleet also argues that because the distribution was not made in strict accordance with Article VIII, it required written Member approval under Section 9.2(a), which he did not give.[49]

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[46] *Id.* § 9.5; Fleet's MSJ App. 211-12, 215.
[47] Fleet's MSJ 17–18; Fleet's Combined Resp. & Reply 21.
[48] Fleet's MSJ 18–19.
[49] *Id.* at 20.

2. Article VIII does not bar a Tax Distribution whenever any obligation remains outstanding.

¶ 52. Article VIII governs whether the distribution was permitted. Section 8.1 defines Net Cash Flow generally as the Company's cash proceeds, less expenses and reasonable reserves established by the Manager.[50] It then directs that Net Cash Flow be "applied or distributed" in a specified order of priority, at such times and in such amounts as the Manager determines in its sole discretion. As relevant here, Section 8.1 places Company debts and obligations owed to non-Members ahead of Tax Distributions to Members.[51] Section 8.2, in turn, provides that the Company "shall" make Tax Distributions each year, "subject to a determination of Net Cash Flow pursuant to Section 8.1."

¶ 53. Read together, these provisions give non-Member obligations priority, but without making their existence an absolute bar to a Tax Distribution. Section 8.1 calculates available cash only after reasonable reserves have been established, while Section 8.2 requires an annual Tax Distribution when that calculation permits one. The resulting rule is that obligations then payable must be paid or reasonably reserved for before a Tax Distribution is made.

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[50] Cash proceeds exclude contributions or loans by a Member or affiliate of a Member. Company Agreement § 8.1.

[51] *Id.* The Court lists only the items relevant to adjudication of the MSJs.

¶ 54. Fleet reads Article VIII to bar *any* Tax Distribution whenever FG Aledo owes even one dollar to a non-Member, regardless of when the obligation comes due or whether a reserve exists.[52] That construction conflicts with Section 8.2's annual-distribution requirement and Section 8.1's authorization of reasonable reserves. Reserves allow the Manager to set aside cash for obligations not yet due rather than pay them immediately. Yet, under Fleet's reading, even a long-term obligation fully covered by a reserve would block every Tax Distribution until paid. Accordingly, the only reasonable construction that gives effect to both provisions is that obligations then payable must be paid or reasonably reserved for before a Tax Distribution, and that any distribution must come from the Net Cash Flow that remains.

3. Neither side has proven or disproven cause as a matter of law.

¶ 55. Under this construction, Fleet has not conclusively established cause. The record does not show as a matter of law how much Net Cash Flow was available on April 9, 2026, what reserves KTFW had established, or which obligations to non-Members were then payable. It also leaves unresolved whether the intercompany obligations were valid, whether Section 6.4 treats some as affiliate loans subject to Article VIII's order of priority, and whether any asserted failure remained uncured after the applicable cure period. Fleet's evidence may show that obligations to non-

[52] Fleet's Combined Resp. & Reply 21 ("[I]f FG Aledo owed even one dollar to a non-Member, the [tax] distribution jumped the queue.").

Members appeared on FG Aledo's books, but those entries alone do not establish their validity, maturity, or priority under the Agreement.[53]

¶ 56. The supplemental financial records do not supply the missing information. They reflect substantial payments to Members, including Fleet, made while the obligations on which he now relies remained outstanding.[54] The KTFW Parties contend that this history undercuts Fleet's position and that the records call into question the validity of several intercompany obligations. Fleet disputes both the records' significance and the usury theory that the KTFW Parties draw from them. The Court need not resolve the usury dispute here. The competing evidence confirms only that the validity, character, and maturity of the purported obligations will require factfinding.

¶ 57. Those same factual disputes preclude summary judgment for Fleet under Section 9.2(a).[55] That provision requires Member consent for any distribution not made in strict accordance with Article VIII. Fleet therefore must first establish that the April 9 distribution departed from Article VIII's order of priority. He has not done so as a matter of law.

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[53] Fleet's MSJ App. 170–84 (promissory notes from FG Aledo to non-Members); Fleet's Combined Resp. & Reply App. 40–42 (Oct. 5, 2026 Ackermann Decl. and calculated balances owed by FG Aledo).
[54] KTFW's Mot. for Leave Exs. 13–17 (App. 013–41); Fleet's Cross-Mot. for Leave Exs. 2–4 (App. 20–23).
[55] Fleet's MSJ 20; Fleet's Combined Resp. & Reply 19; *see also* MSJ Hr'g Tr. 13:5–19; 48:25–49:10; Company Agreement § 9.2(a) (providing that the written consent of the Members is required for Major Decisions, including "any distribution of Company funds other than in strict accordance with Article VIII").

¶ 58. Conversely, the KTFW Parties have not conclusively established a lack of cause for removal. Although Section 8.1 gives the Manager discretion over reserves and the amount of Net Cash Flow available for distribution, that discretion remains subject to Article VIII's order of priority. Gill's declaration does not conclusively prove the amount of Net Cash Flow available on April 9, the reserves then in place, or whether obligations then payable had been paid or reasonably reserved for.[56]

¶ 59. Because neither Fleet nor the KTFW Parties have established as a matter of law the existence or absence of cause to remove KTFW, their motions as to cause are **DENIED**.

CONCLUSION

¶ 60. Fleet's August 12, 2026 vote satisfied Section 9.5's voting requirement for removal, but his appointment of himself as successor Manager was ineffective. Whether KTFW was removed turns on whether cause existed, and that question remains for trial. Fleet bears the burden to establish cause. Until that question is resolved, nothing in this Opinion displaces KTFW as FG Aledo's incumbent Manager. Accordingly, the Court **DENIES** Fleet's MSJ and **GRANTS IN PART** KTFW's MSJ.

[56] KTFW's Resp. to Fleet's MSJ App. 031–35 (Sept. 25, 2026 Gill Decl.).

¶ 61. IT IS THEREFORE DECLARED that Timothy H. Fleet's August 12, 2026 appointment of himself as successor Manager of FG Aledo Development, LLC was ineffective under Section 9.5 of the Company Agreement and that Fleet is not the Manager of FG Aledo Development, LLC.

¶ 62. IT IS FURTHER ORDERED under Rule 166a(h)(4) that the following matters are established as a matter of law: (1) Section 9.2(b) of the Company Agreement does not govern removal of the Manager under Section 9.5, and (2) Fleet's August 12, 2026 vote constituted the "unanimous vote of Members other than the Manager" required by Section 9.5. Whether cause existed for KTFW's removal remains for trial. All other relief requested in the motions, other than attorneys' fees, is **DENIED**. The parties' requests for attorneys' fees are deferred to final judgment.

IT IS SO ORDERED.



HON. BRIAN STAGNER
Judge of the Texas Business Court,
Eighth Division

SIGNED: November 13, 2026

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Envelope ID: 122444855
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Filing Description: Memorandum Opinion and Order on Competing Motions for Summary Judgment Regarding Managerial Authority
Status as of 11/13/2026 12:37 PM CST

Associated Case Party: Riverside Homebuilders, LTD.

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