AMENDED AND RESTATED OPERATING AGREEMENT
OF

MMF RED HAWK INVESTMENTS, LLC

A DELAWARE LIMITED LIABILITY COMPANY

THE SECURITIES REPRESENTED BY THIS INSTRUMENT OR DOCUMENT (INCLUDING ANY BLOCKCHAIN-BASED TOKEN, BOOK-ENTRY TOKEN, DIGITAL "WRAPPER," OR OTHER DIGITAL REPRESENTATION THEREOF) HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, SUCH SECURITIES (AND ANY TOKEN OR OTHER DIGITAL REPRESENTATION THEREOF) MAY NOT BE SOLD OR OTHERWISE TRANSFERRED AT ANY TIME, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE COMPANY THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR THE SUBMISSION TO THE MANAGER OF THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGER TO THE EFFECT THAT ANY SUCH TRANSFER OR SALE WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "**Agreement**") is made and entered into as of _____, 20___ (the "**Effective Date**"), by and among the members admitted to the Company(the "**Members**") who, in consideration of the mutual promises herein contained, agree as follows:

RECITALS

A. MMF RED HAWK INVESTMENTS, LLC (the "**Company**") was originally formed by the filing of a Certificate of Formation (the "**Certificate of Formation**") with the Secretary of State of Delaware on October 28, 2025 pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *et seq.*, as the same may be amended from time to time (the "**Act**").

B. A Limited Liability Company Agreement for the Company was entered into on October 28, 2025 (the "**Original Agreement**") by the Sponsor Member.

C. The Sponsor Member desires to appoint itself as the "Manager" and to admit additional Persons as Members, amend and restate the Original Agreement in its entirety, and operate the Company in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Original Agreement is hereby amended and restated in its entirety as set forth herein.

ARTICLE I
DEFINITIONS

1.01 **Definitions**. The following terms used in this Agreement shall have the following meanings (unless expressly provided herein):

(a) "**Affiliate**" shall mean any Person that directly or indirectly through one (1) or more intermediaries, controls, is controlled by or is under common control with another specified Person; provided, however, that neither the Company nor any Company Subsidiary shall be an Affiliate of the Manager or the Sponsor Member.

(b) "**Bankruptcy**" with respect to the Company or any Member shall mean any one (1) of:

(i) The filing of a voluntary petition in bankruptcy or for reorganization or for adoption of an arrangement under the Bankruptcy Code;

(ii) The making of a general assignment for the benefit of creditors;

(iii) The appointment by a court of a receiver for all or a portion of the property of the Company or such Member, as appropriate;

(iv) The entry of an order for relief in the case of any involuntary petition in bankruptcy; or

(v) The assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of the Company's or such Member's property, as appropriate.

(c) "**Business Day**" shall mean any day (excluding Saturdays and Sundays) on which commercial banks in the States of Colorado and Delaware, are open for business.

(d) "**Capital Account**" shall mean a capital account maintained for each Member in accordance with the Code and Regulations.

(e) "**Capital Contribution**" shall mean any contribution to the capital of the Company in cash or property by a Member whenever made, including Initial Contributions, Mandatory Contributions, or contributions made pursuant to Sections 5.02 or 5.03.

(f) "**Capital Event**" shall mean (A) a sale, refinance, exchange (but excluding a 1031 exchange), transfer, assignment, contribution or other disposition (including a condemnation or foreclosure) of all or any portion of the Property or a recovery of awards or insurance proceeds resulting from a casualty or condemnation (to the extent proceeds are not used to rebuild the Property) affecting the Property or (B) a distribution of non-cash property to the Members pursuant to Article XVI.

(g) "**Capital Event Cash Flow**" shall mean, for any given period, (A) the cash proceeds received by the Company from a Capital Event, or a recovery of awards or insurance proceeds resulting from a casualty or condemnation (to the extent such proceeds are not used to rebuild the Property) affecting the Property, in excess of amounts necessary to discharge Company obligations with respect to the Property (or applicable portion thereof), or (B) non-cash equity interests (including interests in a limited liability company or limited partnership) to be distributed pursuant to Article XVI.

(h) "**Cash Expenditures**" shall mean all disbursements of cash during the applicable period, including, without limitation, cash expenditures for operating expenses, debt service, including principal and interest (including debt service on loans from Members), monthly payments under any management agreements, and the monthly funding of any management Reserve account. "Cash Expenditures" shall exclude, however, payments and distributions to be made pursuant to Articles VII and XVI of this Agreement.

(i) "**Cash Receipts**" shall mean all cash receipts of the Company from whatever source, including, without limitation, operating income, and interest or investment earnings on the Reserves and assets of the Company; "Cash Receipts" shall exclude, however, cash from a Capital Event, cash from a Capital Contribution and proceeds from a loan to the Company.

(j) "**Class A Member**" shall mean the Sponsor Member, and each Investor Member with a Capital Percentage equal to or greater than 5%, as designated in such Investor Member's Subscription Agreement.

(k) "**Class B Member**" shall mean each Investor Member that is not a Class A Member, as designated in such Investor Member's Subscription Agreement

(l) "**Code**" shall mean the Internal Revenue Code of 1986, as amended.

(m) "**Debt Financing**" shall mean the loan or loans obtained by the Company or any Company Subsidiary to acquire, develop and/or construct the Project, and any refinancing thereof.

(n) "**Economic Interest**" shall mean a Person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the Company, and shall include the obligations or options to make Capital Contributions, as may be applicable pursuant to the terms of this Agreement, including being subject to the consequences for the failure to contribute pursuant to the terms of this Agreement, but excludes any other rights of a Member, including the right to vote or to participate in management, or, except as may be provided in the Act, any right to information concerning the business and affairs of the Company.

(o) "**Economic Interest Owner**" shall mean the owner of an Economic Interest who is not a Member.

(p) "**Entity**" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

(q) "**Fiscal Year**" shall mean the taxable year of the Company for federal income tax purposes as determined by Code and Regulations, which shall be the calendar year unless another fiscal year is selected by the Manager.

(r) "**Initial Contribution**" shall mean the amount of any contribution by a Member pursuant to Section 5.01(a).

(s) "**Interest**" shall mean a Member's entire interest in the Company including the Member's Economic Interest in the Company, any right to vote or participate in management, any right to information concerning the business and affairs of the Company provided by this Agreement or the Act, and such Member's entire interest under this Agreement.

(t) "**Investor Member**" shall mean each Member of the Company other than the Sponsor Member.

(u) "**Majority Interest**" shall mean a majority of the Capital Percentages held by the Class A Members in the Company.

(v) "**Manager**" shall mean the Sponsor Member, or any other Persons that succeed such Manager in that capacity as provided in Article IX. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(w) "**Mandatory Contribution**" shall mean all contributions made by a Member pursuant to Section 5.01(b).

(x) "**Member**" shall mean each Person who executes a counterpart of this Agreement as a Member and any other Persons admitted as additional or substituted Members pursuant to this Agreement, so long as they remain Members. If a Person is a Member immediately prior to the purchase or acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Interest or Economic Interest, as the case may be.

(y) "**Operating Cash Flow**" shall mean with respect to any given period the excess, if any, of Cash Receipts for such period over Cash Expenditures for such period.

(z) "**Prime Rate**" means the "prime rate" as published in the Wall Street Journal (and if not so published, by the bank at which the Company's bank accounts are established).

(aa) "**Person(s)**" shall mean any individual or Entity.

(bb) "**Promote Clause**" means Section 7.02(b)(ii)(x).

(cc) "**Promote Interest**" means the Sponsor Member's right to receive distributions pursuant to the Promote Clause.

(dd) "**Promote Percentage**" means the percentage set forth in Section 7.02(b)(ii)(x).

(ee) "**Property**" shall mean that certain property located at 1690 Cherokee Mountain Circle, Castle Rock, Colorado (including any improvements, personal property, and tangible and intangible property, located at thereon), and all other real and personal property, tangible and intangible, owned by the Company and any Company Subsidiary.

(ff) "**Realberry**" shall mean Realberry Real Estate Services, LLC, a Colorado limited liability company.

(gg) "**Regulations**" shall include temporary and final regulations promulgated under the Code as from time to time in effect.

(hh) "**Required Contribution**" shall mean the Initial Contributions and Mandatory Contributions made pursuant to Sections 5.01(a) and 5.01(b).

(ii) "**Reserves**" shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

(jj) "**Sponsor Affiliate**" means any Person that, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by or is under common control with Realberry provided, however, that neither the Company nor any Company Subsidiary shall be a Sponsor Affiliate.

(kk) "**Sponsor Member**" shall mean MMF Red Hawk Member, LLC, a Delaware limited liability company.

(ll) "**Sponsor Parties**" means the Manager, each Sponsor Member, Chad C. McWhinney, Troy C. McWhinney, any Sponsor Affiliate.

(mm) "**Sponsor Principal**" means Chad C. McWhinney or Troy C. McWhinney.

(nn) "**Stabilization**" means the date that is two (2) years following the completion of the initially planned renovations of residential units at the Project.

(oo) "**Subscription Agreement**" shall mean the agreement between the Company and an Investor Member pursuant to which such Investor Member has subscribed for an Interest in, and has agreed to make Capital Contributions to, the Company.

(pp) "**Token**" has the meaning set forth in Section 13.08.

(qq) "**Undistributed Required Contribution**" of a Member shall mean, as of any date of its calculation, the excess, if any, of the Required Contributions of such Member over the total distributions to such Member pursuant to Section 7.02 (a), as the same may also

be reduced pursuant to Section 5.02. Additionally, the Undistributed Required Contribution of the Sponsor Member shall be reduced, on a dollar-for-dollar basis, by the Initial Contributions made by Investor Members (and distributed to the Sponsor Member) pursuant to Section 5.01(a)(ii).

(rr) "**Undistributed 8% Required Contribution Return**" of a Member shall mean, as of any date of its calculation, the excess, if any, of the 8% Required Contribution Return of such Member over the total distributions to such Member pursuant to Sections 7.02(b)(i), as the same may also be reduced pursuant to Section 5.02.

(ss) "**8% Required Contribution Return**" shall mean, with respect to each Member that has made a Required Contribution, a cumulative preferred return on such Member's Undistributed Required Contributions (accruing as set forth below) at a rate of eight percent (8%) per annum, compounded annually. Such preferred return shall accrue on a daily basis (using a 365/366-day year, as applicable). The 8% Required Contribution Return shall accrue as follows: (a) for the Sponsor Member and its Initial Contribution, beginning on December 4, 2025 (i.e., the date on which the Property was acquired by a Company Subsidiary), (b) for Investor Members, beginning on the date described in Section 5.01(a)(ii)(B), and (c) for all other Required Contributions, beginning on the later of the due date for such Required Contribution, and the date such Required Contribution is actually made (or deemed made).

ARTICLE II
CONTINUATION OF COMPANY

2.01 **Continuation**. The Company was formed under and pursuant to the provisions of the Act by filing the Certificate of Formation. The Company shall continue to be operated as a limited liability company under the Act, subject to the provisions set forth in this Agreement

2.02 **Name**. The name of the Company shall continue to be MMF Red Haw Investments, LLC.

2.03 **Principal Place of Business**. The principal place of business of the Company shall continue to be 1800 Wazee St, Suite 200, Denver, Colorado 80202. The Company may locate its places of business and registered office at any other place or places as the Manager may from time to time deem advisable.

2.04 **Registered Office and Registered Agent**. The registered office and registered agent for service of process of the Company shall continue to be such office and agent as set forth on the Certificate of Formation, or such other place and agent as the Manager may from time to time designate.

2.05 **Term**. The term of the Company shall continue, and shall be perpetual, unless earlier dissolved and terminated pursuant to the Act or any provision of this Agreement.

ARTICLE III
BUSINESS OF COMPANY

3.01 **Permitted Businesses**. The business of the Company shall be:

(a) To accomplish any lawful business whatsoever, or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its assets, including, without limitation, to acquire, entitle, develop, construct, operate, lease, maintain, hold for investment, finance, market, sell and otherwise use the Property for profit (the "**Project**").

(b) To exercise all other powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act.

(c) To engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

(d) Without limitation on the foregoing, the Project currently includes 60 for-rent townhomes on approximately 4.4 acres.

The business of the Company may be conducted directly by the Company or through direct or indirect subsidiaries of the Company (each, a "**Company Subsidiary**"). The acquisition of the Property and the activities of the Project may be effected through the utilization of Company Subsidiaries, as determined by the Manager.

3.02 **Powers**. The Company shall have the power to do and perform any and all things as necessary, customary, convenient, or incidental to carry out the purposes set forth in Section 3.01 of this Agreement.

ARTICLE IV
MEMBERS; INITIAL PERCENTAGES

4.01 **Names, Addresses, and Initial Contributions**. The name, address, and Initial Contribution of each Investor Member is set forth on such Member's Subscription Agreement. The Manager shall maintain a record of each Member's Capital Contributions and Capital Percentage, and each Member may reasonably request such information (but not more frequently than once per calendar year) with respect to itself, but not with respect to any other Member. For the avoidance of doubt, information related to or arising out of any individual Member's Capital Contributions or the terms, conditions, or status thereof is confidential and shall not be disclosed by the Company or Manager to any other Investor Member.

4.02 **Initial Capital Percentages**. Each Member shall have an initial "**Capital Percentage**" (set forth on the books and records of the Company), which is subject to adjustment pursuant to Sections 5.01, 5.02 and 5.03. A Member's initial Capital Percentage shall equal a fraction, expressed as a percentage, the numerator of which is equal to such Member's Initial Contribution, and the denominator of which is the aggregate Initial Contributions made by all Members; provided, however, that solely for purposes of determining the Capital Percentages of the Members, the Sponsor Member's Initial Contribution shall be reduced, on a dollar-for-dollar basis, by the Initial Contributions made by Investor Members (and distributed to the Sponsor Member) pursuant to Section 5.01(a)(ii).

ARTICLE V
CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

5.01 **Capital Contributions**.

(a) **Initial Contributions**.

(i) **Contribution of the Sponsor Member**. On December 4, 2025, the Sponsor Member made an Initial Contribution equal to $11,158,000.00.

(ii) **Contributions of Investor Members**.

(A) From time to time after the Effective Date, the Manager may (1) permit any Person who executes and delivers a Subscription Agreement that has been accepted by the Manager, in its sole discretion, to be admitted to the Company as a new Investor Member, or (2) permit existing Investor Members to make additional Initial Contributions and be treated as new Members to the extent of such additional Initial Contribution (the date of any such admission or increase to Initial Contribution is referred to herein as an "**Additional Closing**"), provided that (i) the aggregate Initial Contributions of Investor Members made pursuant to Additional Closings shall not exceed $10,600,100 (the "**Initial Contribution Cap**"), and (ii) there shall not be any Additional Closings after the one year anniversary of the Effective Date (the "**Additional Closings End Date**").

(B) Each Investor Member shall, upon the applicable Additional Closing, make a Capital Contribution to the Company in such amount as may be agreed to by the Manager, which contribution shall be treated as an Initial Contribution under this Section 5.01(a) and such Member shall be subject to a corresponding Mandatory Contribution under Section 5.01(b). For purposes of determining the 8% Required Contribution Returns of Investor Members, the Capital Contributions made by an Investor Member upon an Additional Closing shall be deemed made on the first day of first calendar month following such Additional Closing.

(C) No Investor Member admitted, or increasing its Initial Contribution, pursuant to this Section 5.01(a)(ii) will be entitled to any allocations or distributions of Operating Cash Flow or Capital Event Cash Flow that have been distributed prior to the Additional Closing upon which such admission or increase took place (except to the extent that any such allocations or distributions of Operating Cash Flow or Capital Event Cash Flow were specifically associated only with an Investor Member's Capital Contributions prior to an applicable increase).

(iii) **Use of Investor Member Initial Contributions**. Each Initial Contribution made by an Investor Member pursuant to Section 5.01(a)(ii) shall be immediately distributed to the Sponsor Member, and such distribution shall reduce the Unreturned Required Contributions of the Sponsor Member and adjust the Capital Percentages of the Members as set forth in Section 4.02 (but for the avoidance of doubt, shall not decrease the Undistributed 8% Required Contribution Return of the Sponsor Member); provided, however, to the extent any such distribution of an Initial Contribution would cause the Capital Percentage of the Sponsor Member to be reduced below 5%, then such Initial Contribution (or portion thereof) shall be retained by the Company and used for Company, Company Subsidiary and Project expenses.

(b) **Mandatory Contributions**. In addition to the Initial Contributions set forth in Section 5.01(a), the Members shall be required to make additional Capital Contributions (collectively, "**Mandatory Contributions**") as follows: (1) as shall be determined by the Manager from time to time to be reasonably necessary to meet the expenses of the Company, and (2) to fund all or a portion of the Redemption Price payable by the Company. The combined total amount of Mandatory Contributions required to be contributed by each Member shall not exceed ten percent (10%) of such Member's Initial Contribution (with respect to each Member, the "**Mandatory Contribution Cap**"). With respect to all Mandatory Contributions, each Member shall contribute its pro rata share of then aggregate unfunded Mandatory Contribution Caps of all Members.

In the event the Manager determines to require Mandatory Contributions, the Manager shall send notice (a "**Mandatory Capital Call**") to all Members specifying the Mandatory Contributions required from each of the Members. The Members shall contribute the amount required pursuant to this Section 5.01(b) within the time period specified by the Manager, which shall not be less than five (5) Business Days after receipt of such written notice from the Manager. The failure by a Member to advance funds following a Mandatory Capital Call shall constitute a default under this Agreement. For all Members who contribute their proportionate share of the additional funds required pursuant to a Mandatory Capital Call as provided in this Section 5.01(b), all such contributions shall, together with the Initial Contributions, constitute Required Contributions and shall accrue the 8% Required Contribution Return.

5.02 **Failure to Make Capital Contributions.**

(a) Interest. Except as otherwise provided in this Agreement, upon any failure by a Member to contribute its share of a Mandatory Capital Call in full when due, interest will accrue at the Default Rate on the outstanding unpaid balance of such capital contribution, from and including the date such capital contribution was due until the earlier of the date of payment of such Capital Contribution by such Member (or a transferee) or the date on which the Manager imposes a Default Charge pursuant to Section 5.02(c). The "**Default Rate**" with respect to any period shall be the greater of (i) a rate equal to eighteen percent (18%) per annum, or (ii) the Prime Rate plus five percent (5%) (but, in any event, not greater than the highest interest rate for such period permitted by applicable law).

(b) Default. Except as otherwise provided in this Agreement, if any Member fails to contribute its share of a Mandatory Capital Call when due, and such failure continues for five (5) Business Days after receipt by such Member of written notice of such failure, then the Manager may designate such Member a "**Defaulting Member**" and such Member shall be in default as of the end of such 5-Business Day period. The Company shall be entitled to enforce the obligations of each Member to make the contributions to capital specified in this Agreement, and the Company shall have all remedies available at law or in equity in the event any such contribution is not so made. Such Member shall pay all costs and expenses the Company incurs in connection with such Member's failure to make a capital contribution, including, without limitation, attorneys' fees and all fees and expenses incurred in connection with any legal proceeding relating to such Member's failure. The remedies provided for in this Section 5.02(b) are in addition to and not in limitation of any other right or remedy of the Company provided by law or equity, this Agreement, or any other agreement entered into by or among any one or more of the Members and/or the Company (including, without limitation, any Subscription Agreement relating to the Company). Each Member hereby agrees that (x) the

remedy at law for damages resulting from its default under this Agreement is inadequate because the funding of Company investments and other obligations requires the timely availability of required Capital Contributions and (y) the remedies set forth in this Section 5.02 are fair and reasonable in light of the difficulty in ascertaining the actual damages the Company would incur and the non-defaulting Members as a result of the Defaulting Member's failure to contribute capital when due under this Agreement. Upon the occurrence of a default, the Manager may, in its sole and absolute discretion and without limiting any remedy the Company may pursue pursuant to the foregoing, pursue one or more of the following alternatives:

(i) Institute an action for specific performance of the Defaulting Member's obligation to contribute the Mandatory Contribution(s) in question;

(ii) Impose a Default Charge upon the Defaulting Member pursuant to Section 5.02(c);

(iii) Offer the Defaulting Member's entire Interest to the other Members or to other third-parties for purchase, at a price for that Interest equal to the lesser of (A) fifty percent (50)% of the then fair market value of the Interest (determined in the sole and absolute discretion of the Manager) or (B) the pre-default balance in the Defaulting Member's Capital Account, subject to such other terms as the Manager in its reasonable discretion shall determine; provided, that, the purchasing Members agree to assume the Mandatory Contribution obligations of the Defaulting Member, including any portion then due and unpaid;

(iv) Assist the Defaulting Member in selling its Interest, with the full assumption by the buyer of the Defaulting Member's Mandatory Contribution obligations, including any portion then due and unpaid;

(v) Accept a late contribution from the Defaulting Member, with interest (unless such interest is otherwise waived by the Manager), in satisfaction of its then outstanding obligation to contribute hereunder;

(vi) Cause any distributions which would otherwise be made to the Defaulting Member to be applied against any amounts due and payable from the Defaulting Member;

(vii) Pursue and enforce all of the Company's other rights and remedies against the Defaulting Member under this Agreement, the relevant Subscription Agreement and Delaware law, including but not limited to the commencement of a lawsuit to collect the unpaid capital contribution, interest and costs, and reimbursement (with interest at the Default Rate) of any other damages suffered by the Company;

(viii) Cause the Company to redeem the Defaulting Member's entire Interest for a non-interest bearing, nonrecourse promissory note (in such form as the Manager shall designate) (payable exclusively out of the distributions that such Defaulting Member would otherwise have received from the Company). Such promissory note shall be due six (6) months following the Company's final liquidation. Such promissory note shall be secured by the Defaulting Member's interest under a security agreement in a form the Manager designates and shall be enforceable by the Defaulting Member only against such security;

(ix) Cause the Defaulting Member to forfeit to the Company as recompense for expenses and damages suffered, and the Company shall withhold (to be allocated to the Members, other than the Defaulting Member), all distributions that such Defaulting Member would otherwise receive relating to its Capital Contributions; provided that the Company may retain any remaining balance (after application of the foregoing) until the final liquidating distribution of the Company and otherwise used to satisfy such expenses, deductions, losses and/or damages as they accrue or arise; or

(x) Designate one or more Persons (with such Person or Persons' prior consent) to assume responsibility for the Defaulting Member's remaining Mandatory Contribution obligations and to assume and succeed to all of the rights of such Member's Interest attributable to such Mandatory Contributions, any such third party purchaser may become a Member to the extent of the interest assumed hereunder.

If a Defaulting Member's Interest in the Company is sold pursuant to (iii) or (iv) above or if the Manager exercises its discretion to accept a late contribution pursuant to (v) above, the Manager shall not impose a Default Charge pursuant to (ii) above. Otherwise, to the maximum extent permitted by law, the remedies set forth above shall be cumulative, and the use by the Manager of one or more of them against a Defaulting Member shall not preclude the use of any other such remedy.

(c) Default Charge. The Members agree that the damages suffered by the Company as the result of a default by a Defaulting Member will be substantial and that such damages cannot be estimated with reasonable accuracy. To the maximum extent permitted by law, as a penalty for such default (which each Member hereby agrees is reasonable), and subject to Section 5.02(a), the Manager may cause the Capital Contributions, Undistributed Required Contributions, 8% Undistributed Required Contribution Return, and Capital Account (and corresponding Interest) of a Defaulting Member to be reduced by an amount equal to fifty percent (50%) of such balances at the time of the default (the "**Default Charge**"). The Manager shall adjust the Capital Percentages of all Members (pro rata) to take account of any such Default Charge.

(d) Distributions. The Manager, in its sole and absolute discretion, and subject to any Default Charge imposed pursuant to Section 5.02(c), may cause the Company to withhold any distributions that otherwise would be made to a Defaulting Member until such time as the Company makes its final liquidating distribution, or until such earlier time as the Manager may determine. Any distributions so withheld, or the proceeds thereof, may be used by the Company for any purpose. If the Manager has withheld distributions from a Defaulting Member pursuant to this Section 5.02(d) and subsequently determines to pay the withheld distributions to such Defaulting Member, it may elect to (1) pay cash to such Defaulting Member in lieu of any distributions which were made to non-Defaulting Members in kind and withheld from such Defaulting Member, but the Company shall not, in such event, be liable to such Defaulting Member for any subsequent increase in the value of any securities which would have been distributed to such Defaulting Member had such Defaulting Member not defaulted, or (2) deliver to such Defaulting Member the securities or other assets (or substantially identical securities or assets) such Defaulting Member would have received had the distribution to such Defaulting Member not been withheld, but the Company shall not, in such event, be liable for any diminution in the value of such securities or other assets subsequent to the date such securities would have been distributed. Any losses incurred

by the Company upon the disposition of the securities or other assets that would otherwise have been distributed to the Defaulting Member in kind shall be for the account of the Defaulting Member.

(e) Effect of Default on Remaining Interest in Company. The application of the aforesaid penalty provisions shall not relieve any Defaulting Member of its obligation to make all payments of its Mandatory Contributions when due.

5.03 **Additional Capital Raising**. After the earlier to occur of the Additional Closings End Date and the receipt by the Company of Initial Contributions from Investor Members equal to the Initial Contribution Cap, the Manager may elect to fund expenses of the Company or any Company Subsidiary by causing the issuance by the Company of new Interests for such consideration as the Manager shall determine. Such new Interests shall first be offered to the then existing Members of the Company. The Company shall provide written notice to the Members of its intention to admit a new Member and the notice will include the terms and conditions of the Interests being offered (which terms and conditions, for clarity, may be different from (and more favorable than) the terms and conditions associated with any previously issued Interests). Each Member shall have the right to purchase all or a portion of its then Capital Percentage of the interest proposed to be offered, upon the same terms and conditions as would be offered to a new Member, by giving notification to the Manager pursuant to notification instructions from the Manager, of its intention to do so within fifteen (15) days following receipt of the written notice from the Company. The failure of a Member to so notify the Company of its desire to purchase all or a portion of its Capital Percentage of the new Interest within said fifteen (15) day period shall result in the termination of the right of such Member to acquire such new Interest and the Company shall be entitled to proceed with the issuance of a new Interest (or the portion of such Interest not acquired by existing Members) in the Company upon the terms and conditions set forth in the notice.

5.04 **Return of Capital**. Except as herein provided with respect to distributions during the term of the Company or following dissolution, no Member has the right to demand a return of such Member's Capital Contributions (or the balance of such Member's Capital Account). Further, no Member has the right (i) to demand and receive any distribution from the Company in any form other than cash or (ii) to bring an action of partition against the Company or its property. No Manager or Member shall have personal liability for the repayment of the capital contributed by a Member. Except as herein provided, no Member shall be entitled to or shall receive interest on such Member's Capital Contributions. No Member is obligated to accept any distribution from the Company except as expressly provided herein or under the Act. No Member shall have any priority over any other Member with respect to the return of any Capital Contribution, except as expressly provided herein.

5.05 **No Third Party Beneficiaries**. The provisions of this Article V are not intended to be for the benefit of and shall not confer any rights on any third party or creditor or other Person to whom any debts, liabilities or obligations are owed by the Company. Without limitation on the foregoing, to the fullest extent permitted by the Act (including Section 18-502), no third party shall have any right to enforce or rely on any contribution obligation (whether under this Article V or otherwise) on a Member.

ARTICLE VI
CAPITAL ACCOUNTS/ALLOCATIONS

6.01 **Capital Accounts and Allocations**. Each and all of the provisions of Exhibit C (the "**Tax Exhibit**") are incorporated herein and shall constitute part of this Agreement. The Tax Exhibit provides for the establishment and maintenance of capital accounts and the allocation of profits and losses of the Company. The Company shall be operated as a partnership solely for state and federal income tax purposes.

ARTICLE VII
DISTRIBUTIONS

7.01 **Intentionally Omitted**.

7.02 **Operating Cash Flow and Capital Event Cash Flow**. From time to time as determined by the Manager (other than in connection with the dissolution and winding up of the Company which is provided for under Article XV below), and subject to Section 12.01(c), Operating Cash Flow and Capital Event Cash Flow (together, "**Cash Flow**") shall be apportioned, distributed, and paid to each Member in the following manner and order:

(a) Initially, Cash Flow shall be distributed among the Members in proportion to their respective Undistributed 8% Required Contribution Returns until each Member's Undistributed 8% Required Contribution Return is reduced to zero; and

(b) Thereafter, Cash Flow shall be apportioned among the Members in proportion to their respective Capital Percentages, and the amount so apportioned to each Member shall be distributed as follows:

(i) First, to such Member until such Member's Undistributed Required Contribution is reduced to zero; and

(ii) all Cash Flow remaining after distributions have been made pursuant to Sections 7.02(a) and (b) shall be distributed (x) 25% to the Sponsor Member, and (y) 75% to such Member.

7.03 **Division Among Members**. If there is a change in Members or Economic Interest Owners in the Company during a Fiscal Year, any distributions thereafter shall be made so as to take into account the varying Interests during the period to which the distribution relates in any manner chosen by the Manager to the extent permitted by the Code and Regulations.

7.04 **Corrections and Offsets of Distributions**. If the Manager determines that any distribution of Operating Cash Flow or Capital Event Cash Flow has been made erroneously, or not in compliance with Section 7.02, the Manager may request the return of, and the applicable Member shall promptly return, any such distribution after such a request from the Manager. Additionally, but without duplication, the Manager may alter and/or offset future distributions to correct any such distributions.

7.05 **Withholding.** If the Manager determines that the Company is required under any provision of applicable law to withhold any amount with respect to cash or income distributable or allocable to a Member, the amount so withheld and paid over to the applicable taxing authority with respect to a Member shall be treated as a distribution to such Member for purposes of this Agreement. Each Member hereby agrees that neither the Company nor any other Member shall be liable for any excess taxes withheld in respect of such Member's interest in the Company and that, in the event of over-withholding, a Member's sole recourse shall be to apply for a refund from the appropriate governmental authority. Each Member further agrees to indemnify the Company in full for any amounts required to be withheld and paid pursuant to this Section 7.05, provided that such amounts are paid over to the applicable taxing authority for the account of such Member, and only to the extent such amounts were not withheld from distributions (including, without limitation, any interest, penalties and expenses associated with such payments to the extent that such interest, penalties and expenses result from actions or omissions of the Member rather than of the Company), and each Member will promptly upon notification of an obligation to indemnify the Company pursuant to this Section 7.05 make a cash payment to the Company equal to the full amount to be indemnified.

7.06 **Promote Crystallization**.

(a) Notwithstanding the provisions of Section 7.02, at any time during the three (3) year period following Stabilization, the Sponsor Member may elect (the "**Promote Crystallization Election**"), by notice to the Manager, to "crystallize its promote" and thereby adjust the distributions under Section 7.02 for all future distributions. Promptly following the Promote Crystallization Election, the Manager will determine the Fair Market Value of the Property pursuant to Article X, and notify the Members of the Promote Crystallization Election. After determining the Fair Market Value, the Manager will determine each Member's "**Crystallization Value**" (i.e., the amount to which such Member would be entitled if the Project were sold by the Company for its then Fair Market Value, and distributions of the net sale proceeds from such sale had been made in accordance with Section 7.02 (as modified by Section 5.03, if applicable). Each Member's "**Distribution Percentage**" would then be determined and would be equal to a fraction, expressed as a percentage, (x) the numerator of which is the Crystallization Value of such Member, and (y) the denominator of which is the aggregate Crystallization Values of all the Members. If the Sponsor Member is also causing a Redemption in connection with a Promote Crystallization Election, then the Distribution Percentages shall be determined after such Redemption has been completed.

(b) As an example of the foregoing, if the Sponsor Member's Crystallization Value were $12,000,000 and the aggregate Crystallization Values of all the Members were $80,000,000, the Sponsor Member's Distribution Percentage would equal 15% ($12,000,000 / $80,000,000) and the aggregate Distribution Percentages of all the other Members would equal 85% ($68,000,000 / $80,000,000).

(c) The following shall be effective as of the date the Fair Market Value is determined (provided, however, if the Sponsor Member is also causing a Redemption in connection with a Promote Crystallization Election, then the following shall apply immediately after such Redemption has been completed):

(i) Subject to any application of Section 5.03 and the timing set forth in Section 7.02, all distributions of Operating Cash Flow and/or Capital Event Cash Flow would thereafter be made to the Members in accordance with their respective Distribution Percentages, and the distribution waterfall described in Section 7.02 would be of no further force or effect.

(ii) The Manager shall not deliver any Mandatory Capital Calls. Notwithstanding anything to the contrary in Section 5.03, any offer made to the Members pursuant to Section 5.03 shall be in proportion to their Distribution Percentages (and not Capital Percentages).

(iii) The Sponsor Member may distribute and assign its Interest in the Company to the direct or indirect beneficial owners of the Sponsor Member, and such Persons shall be admitted as substitute Members of the Company (subject to such documentation as reasonably required by the Manager).

(iv) The Manager may, but shall not be required to, unilaterally amend this agreement to memorialize the foregoing consequences of a Promote Crystallization Election (but the absence of any such amendment shall not in any way affect or otherwise nullify the adjustments made pursuant to this Section 7.06).

ARTICLE VIII
BOOKS, RECORDS, TAX AND ACCOUNTING

8.01 Books and Records.

(a) The Manager shall maintain or cause to be maintained at the principal place of business of the Company books of account that accurately record all items of income and expenditure relating to the business of the Company and that accurately and completely disclose the results of the operations of the Company. The Manager may maintain the register of Interests and Economic Interests (and any subdivision thereof), and any other books and records of the Company, in whole or in part, in electronic form, including on a blockchain or other distributed ledger and/or on one (1) or more third-party platforms, and any such register (as maintained from time to time) shall constitute the Company's official register for all purposes under this Agreement and the Act. Such books of account shall be maintained according to generally accepted accounting principles consistently applied, and on the basis of the Fiscal Year.

(b) Any demand for information pursuant to this Section shall be made in writing by a Member, in person or by attorney or other agent. In every instance where an attorney or other agent shall be the person who seeks the right to obtain the information described in subsection (a) of this section, the demand shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the Member. The Company shall reply to such demand upon twenty (20) Business Days' written notice.

(c) Pursuant to Section 18-305(g) of the Act, the Members shall only have such access to the books and records of the Company as expressly provided in this Agreement. Members shall not have access to the books and records of the Company that subject to confidentiality and other restrictions established by the Manager (including those restrictions set

forth in Section 4.01 of this Agreement and Section 18-305(c) of the Act, which is fully incorporated by reference herein).

(d) Subject to the restrictions and requirements herein, each Member and its duly authorized agents or representatives shall be afforded access to such books and records of the Company for inspection and copying (at the requesting Member's expense) at any reasonable time during regular business hours of the Company to be mutually agreed-upon, if (i) the Member seeks the information for any proper purpose reasonably related to its own Interest; and (ii) the Member describes with particularity in such notice the information sought and the specific purpose for seeking the information.

(e) For the avoidance of doubt, any information obtained under this Section is Confidential Information subject to the terms of Section 17.18.

8.02 **Reports**. Within sixty (60) days after the end of each quarter of the Fiscal Year, the Manager shall furnish to each Member a copy of the income statement, cash flow statement and the balance sheet of the Company for such quarter; provided, however, after the Project has been stabilized, the Manager may elect, in its sole and absolute discretion, not to deliver quarterly reports. Within ninety (90) days after the close of each Fiscal Year, the Manager shall furnish to each Member a copy of the income and loss statement, cash flow statement, and the balance sheet of the Company for such Fiscal Year. The Manager shall have the authority to modify the reporting requirements in its reasonable, good faith discretion, provided that the Manager shall furnish to each Member a copy of the income and loss statement, cash flow statement, and the balance sheet of the Company not less frequently than one hundred twenty (120) days after the end of each Fiscal Year.

8.03 **Tax Returns**. The Manager shall cause accountants of the Company to prepare and timely file all income tax and other tax returns of the Company. The Manager shall furnish to each Member as soon as practical following the end of each calendar year, a copy of such information as may be required for such Member to file its federal, state and local tax returns.

8.04 **Special Basis Adjustment**. At the request of either the transferor or transferee in connection with a transfer of an Interest in the Company approved by the Manager pursuant to Article XIII of this Agreement, the Manager shall cause the Company to make the election provided for in the Code and Regulations and maintain a record of the adjustments to the basis of assets resulting from that election. Any such transferee shall pay all costs incurred by the Company in connection with such election and the maintenance of such records.

8.05 **Audit Procedures**. The tax audit procedures for the Company are set forth on Exhibit C.

8.06 **Bank Accounts**. The Manager shall establish and maintain one (1) or more separate accounts in the name of the Company in one (1) or more federally insured banking institutions of its choosing into which shall be deposited all funds of the Company and from which all Company expenditures and other disbursements shall be made.

ARTICLE IX
MANAGEMENT

9.01 **Management**. The business and affairs of the Company shall be solely managed by the Manager, which shall be the "manager" of the Company, within the meaning of the Act. Except for situations in which the approval of the Members is expressly required by this Agreement or by nonwaivable provisions of applicable law, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. In connection with the foregoing, and without limitation on or modification of the provisions of this Agreement, no third party dealing with the Company shall be required to investigate the Manager's authority or to secure the approval of the Members or confirmation of any act of the Manager in connection with the conduct of Company business. The Manager shall have full authority to execute on the Company's behalf any and all agreements, contracts, documents and instruments, and the Manager's execution thereof shall be the only execution necessary to bind the Company thereto. The Manager may also act as the direct "manager" of any Company Subsidiary.

9.02 **Appointment and Resignation of Manager**.

(a) Initial Manager. The Sponsor Member shall serve as the sole Manager of the Company until such time as it resigns as provided herein.

(b) Resignation. The Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of the Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

(c) Vacancies. If the Manager resigns, the Sponsor Member shall appoint a replacement Manager.

9.03 **Certain Powers of Manager**. Without limiting the generality of Section 9.01 above, and subject only to limitations set forth in Section 9.04 below, the Manager shall have power and authority, on behalf of the Company (and on behalf of any Company Subsidiary):

(a) To acquire real and personal property from any Person as the Manager may direct. The fact that a Manager or a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(b) To borrow money for the Company from banks, other lending institutions, the Manager, Members, or Affiliates of the Manager or Members on such terms as the Manager deems appropriate, and without any prior approval or consent of the Members of the Company, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums and to execute and/or deliver loan commitments; loan agreements; funding agreements; promissory notes; deeds of trust; mortgages; security agreements; assignments of leases and rents; Uniform Commercial Code financing statements; environmental agreements; guarantee agreements; indemnification agreements; affidavits; construction cost agreements; subordination agreements; subordination,

non-disturbance and attornment agreements; statements of financial affairs; authorizations; resolutions; certifications; escrow instructions; and any other agreements, assignments, instruments or documents related thereto. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

(c) To purchase liability and other insurance to protect the Company's property and business (including E&O and D&O insurance as deemed appropriate), or to establish one or more self-insurance, captive insurance or pooled insurance programs with Affiliates of the Manager and/or the Sponsor Member;

(d) To hold and own any Company real and/or personal properties in the name of the Company;

(e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell, transfer, exchange, contribute or otherwise dispose of the Property or any other asset of the Company or any Company Subsidiary;

(g) To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments; bills of sale; leases; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary or appropriate, in the opinion of the Manager, to conduct the business of the Company;

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(i) To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Agreement or by the Manager of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

9.04 **Compensation and Reimbursement of the Manager; Affiliate Transactions**.

(a) General. The Manager and its Affiliates shall be paid certain compensation by the Company for rendering services to the Company as provided in this Agreement. The Manager may engage on behalf and at the expense of the Company such persons, firms or corporations as in its sole discretion and judgment it shall deem advisable for the proper operation of the Property and management of the business of the Company, including Realberry and any other Sponsor Affiliate (defined below) of the Manager, and any such Company expenses incurred by the Manager or its Affiliates shall be reimbursed by the Company.

(b) Fees Payable to Manager. The Company shall pay to Realberry (or its designated Affiliate) the fees described on Exhibit B.

(c) Delegation by the Manager; Payments to the Manager and Affiliates. The Manager may contract with other Persons, including Affiliates of the Manager, to perform any of the Manager's duties for or on behalf of the Company; provided, however, that any contract with any Affiliate shall be subject to Section 9.04(d) below; provided, further, that such delegation shall not relieve the Manager of responsibility for such duties. The Manager or any of its Affiliates may, directly or indirectly, render services to or otherwise deal with the Company in connection with carrying out the business and affairs of the Company, including the provision of real property management services, leasing services, property sales services, refinancing services, development services, entity management services (including supervision of accounting and legal matters and/or asset management), construction management services, tenant finish management services and/or project management services and consulting services to the Company (the Manager or any Affiliate thereof that is so providing services to the Company hereunder is referred to herein as a "**Manager Provider**"), subject to Section 9.04(d) below. In the event and for so long as a Manager Provider shall provide such services, the amount of the fee for such services payable to the Manager or the designated Affiliate shall not exceed the amounts set forth on Exhibit B (and if such services are not described on Exhibit B, the amount of such fees shall be subject to Section 9.04(d)). Any compensation paid to a Manager Provider that is consistent with the fee schedule attached as Exhibit B is hereby approved by the Members as similar to those that would be available on an arm's length basis with third parties.

(d) Other Affiliate Transactions. Without limitation on the Manager's authority pursuant to Sections 9.03, 9.04(a), 9.04(b), 9.04(c), 9.09 and 11.05, no approval of the Members shall be required for any contract, agreement, or other arrangement with, or for the payment of compensation to, any Manager or Member, or any Affiliate of a Manager or Member, unless such transaction is on terms that are less favorable to the Company than arm's length terms.

9.05 **Contractual Duties; Standard of Care**. Each Member and the Manager agrees that, to the fullest extent permitted by Section 18-1101 and other provisions of the Act and except to the extent expressly stated in this Agreement:

(a) Duties; Standard of Care. The Manager shall have no fiduciary or other implied duty, responsibility or obligation of loyalty or care to the Company or any Member under the Act or other applicable law, including, without limitation, the principles of statutory, case or common law (and each Member hereby expressly and irrevocably waives and releases the Manager from any such fiduciary or other implied duty, responsibility or obligation of loyalty or care to the Company or any other Member) except as otherwise expressly provided in this

Agreement. Without limiting the foregoing, the Manager shall use commercially reasonable efforts to perform its duties and responsibilities hereunder in compliance with all applicable laws and this Agreement.

(b) Contractual Duties Prevail. To the extent that, at law or in equity, the Manager has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, the Manager, acting pursuant to and in accordance with this Agreement, shall not be liable to the Company or to any other Member except to the extent provided in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of the Manager otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Member.

(c) Determinations by the Manager. Except as expressly provided herein, whenever in this Agreement the Manager or any Affiliate of the Manager is permitted or required to make a decision with respect to any agreement, approval, consent, judgment or other determination to be made by the Manager under this Agreement, the Manager or such Affiliate shall be entitled to consider such interests and factors as it desires, including its own interests, and shall, to the fullest extent permitted by applicable law, have no duty (including fiduciary duties) or obligation to give any consideration to any interest of, or any other factors affecting, the Company, any Member or any other Person.

9.06 **Devotion of Time and Other Activities of Manager and Members**.

(a) The Manager shall not be required to devote its full time to the affairs of the Company but shall devote such time, effort and skill in its sole discretion and judgment as it shall deem necessary for the successful conduct of the business of the Company.

(b) It is acknowledged and agreed by the Members that the Sponsor Parties are involved in real estate projects and other projects that may or may not be near the Property, and the Sponsor Parties may become involved in future real estate projects and other projects (which may or may not be near the Property). Such projects may include, without limitation, those which may directly or indirectly compete with the Project or the business of the Company, and such competitive activities and enterprises by the Manager or any of the Sponsor Parties are expressly permitted. Such projects may involve opportunities and information received by the Manager or any of the Sponsor Parties in any capacities, including, without limitation, capacities with the Company. Each of the Manager and the Sponsor Parties will have no obligation to present to the Company or to any Member of the Company opportunities to participate in projects involving real property not owned by the Company and will have no obligation to offer any participation relating to such projects. Neither the Company nor the Members shall have any right by virtue of this Agreement or the relationship created hereby in or to such other business ventures or activities as the Manager or any of the Sponsor Parties are or may become engaged in or to any income or proceeds derived therefrom; and the pursuit of such ventures or activities, even if competitive with the Project or the business of the Company, shall not be deemed wrongful or improper. Neither the Manager nor any persons, firms or corporations employed by the Manager on behalf of the Company, nor any Sponsor Party, shall be obligated to present any particular investment opportunity to the Company even if such opportunity is of a character which, if presented to the Company, could be taken by the Company; and each of them shall

have the right to take for its own account (individually or otherwise) or to recommend to others any such particular investment opportunity. Without limiting the foregoing, no Sponsor Party shall have any obligation whatsoever to offer to the Company the opportunity to acquire by exchange any real property or project. Further, without limiting the foregoing, each of the Sponsor Parties shall have no obligation to refrain from acquiring, improving, managing, operating or developing any such real property on behalf of the Sponsor Party.

9.07 **Limitations on Liability of Manager; Exculpation and Indemnification**.

(a) In no event shall the Manager or any agent, employee or manager of the Manager be liable, responsible or accountable in damages or otherwise to the Company, the Members, or otherwise solely by reason of being or having been the Manager of the Company, or for any action taken or any failure to act on behalf of the Company within the scope of the authority conferred on the Manager by this Agreement or by law, unless the loss or damage sustained by the Company or any Member shall have been the result of the Manager's fraud, willful misconduct or gross negligence. The Company (or, if applicable, its receiver or trustee) shall indemnify, defend, save harmless and pay all judgments and claims against the Manager, Realberry and their Affiliates, and the officers, directors, shareholders, trustees, members, constituent partners, managers, employees, attorneys, accountants and agents of each of the foregoing (collectively and individually, the "**Manager Indemnified Party**" or "**Manager Indemnified Parties**") from any and all claims, losses, costs, damages, liabilities and expenses of any kind whatsoever, including actual attorneys' fees and court costs and liabilities under state and federal securities laws (to the extent permitted by law) that may be made or imposed upon or incurred by any Manager Indemnified Party by reason of any act performed (or omitted to be performed) for or on behalf of the Company, or in furtherance of or in connection with the Company business, except for those acts performed or omitted to be performed by the party seeking indemnification hereunder which constitute fraud, willful misconduct or gross negligence. Notwithstanding the foregoing, no Member shall have any obligation to make additional Capital Contributions or otherwise incur any personal liability on account of the indemnification provided above, which indemnification will be satisfied solely from the assets of the Company.

(b) In the event of any action by a Member against any of the Manager Indemnified Parties, including a derivative suit, the Company shall indemnify, defend, save harmless and pay all expenditures of the Manager Indemnified Parties, including actual attorneys' fees incurred in the defense of such action, if the Person so entitled to the indemnification is successful in such action.

(c) None of the Manager Indemnified Parties shall be liable to the Members or to the Company for any loss resulting from errors made by any of the Manager Indemnified Parties in good faith or from such acts or omissions, whether or not disclosed, unless such acts or omissions constitute fraud, willful misconduct or gross negligence by the Manager Indemnified Parties in question.

(d) The Company may purchase and maintain insurance on behalf of a person who is or was a Manager, employee or fiduciary of the Company, or who, while a Manager, employee, fiduciary or agent of the Company, is or was serving at the request of the Company

as Manager, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic limited liability company or any corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of this Article. Any such insurance may be procured from any insurance company designated by the Manager or Members of the Company, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere.

(e) The indemnification set forth in this Section shall in no event cause the Members to incur any liability, or result in any liability of the Members to any third party, beyond those liabilities specifically enumerated in the Act or this Agreement.

9.08 **Shared Services and Employment Costs Reimbursement**.

(a) Shared Services of Realberry or Affiliates. Realberry and its Affiliates may, but shall not be obligated to, from time to time, make available certain benefits, services and/or facilities to the Company, any Company Subsidiary, and the Project, which services may include, without limitation, in-house accounting, legal, marketing, claims management, information technology, human resources, central purchasing and procurement, employee benefits administration, payroll administration and general administrative services (collectively, the "**Shared Services**"). The Company (or a Company Subsidiary) shall reimburse Realberry for an allocated portion of the cost of providing the Shared Services (the "**Shared Services Expenses**"), which may be charged to the Company (or a Company Subsidiary) as a Company (or a Company Subsidiary) expense at the election of Realberry. The allocation of Shared Services Expenses shall be made in a manner determined by Realberry in good faith and in its sole discretion. Without limitation on the foregoing, Realberry will generally seek to make such determination (A) with respect to in-house accounting services, on a quarterly or monthly basis at an equitable flat-rate based on the project size, entity capitalization, complexity of the services and/or project activity; and (B) with respect to any other Shared Services: (i) for services which are shared with other entities, projects or properties, utilizing an equitable allocation method determined by Realberry, which may or may not include calculated percentage-based time or work allocations, per unit/activity charges, comparable market-based charges, hourly charges, formula-based assessment of costs based on project size and project activity and/or nominal flat-rate charges for entities with minimal activity and/or other methods, (ii) with respect to services which are not shared with other entities, projects or properties, for the full cost of such services, as calculated by Realberry using similar methods, (iii) utilizing, when applicable, an estimated fully-burdened rate for personnel providing such services, which rate may include estimated occupancy, benefit, insurance and other overhead costs, without markup, and shall not exceed maximum rates charged by third party service providers for similar personnel, and (iv) without duplication of any fee actually charged by Realberry pursuant to Section 9.08(b) and/or Exhibit B of this Agreement for services provided by Realberry personnel related to development, construction management, asset management, finance, property management, leasing or brokerage. Nothing in this section shall limit the Company's responsibility for any of its expenses to third parties, whether incurred directly by the Company or by Realberry on behalf of the Company.

(b) Dedicated Personnel Cost Reimbursement. The allocable "Employment Costs" (defined below) of any Sponsor Affiliate personnel that provide acquisition, development, maintenance, operation, and/or management services in connection with the Property during the conduct of any construction or development activity at the Property (whether such personnel provide services "on-site" at the Project location or "off-site" at an alternative location) shall be directly reimbursed by the Company Subsidiaries receiving such services. The allocation of such Employment Costs shall be made as follows: (i) with respect to personnel that are not 100% dedicated to the Project, the Employment Costs shall be the Employment Cost of such personnel multiplied by a percentage equal to the percentage of such personnel's time that is dedicated to such project, as determined by Manager in good faith and in its sole discretion, and (ii) with respect to personnel that are 100% dedicated to the Project, 100% of the Employment Costs for such personnel shall be charged to the relevant Company Subsidiary. "**Employment Costs**" shall mean the fully-burdened employment costs for any specific personnel, which cost shall include, without limitation, all of the following applicable, actual employment costs: salary compensation, hourly-rate compensation, bonus compensation, occupancy costs, contributions to social security, worker's compensation and unemployment insurance, contributions to group medical, life and disability insurance policies, other fringe benefits, and any other overhead costs.

9.09 **Loan Guaranties**. If agreed to (but only with their respective consents which may be withheld at their sole and absolute discretion) by the Manager, the Sponsor Member, and/or an Affiliate of any of the foregoing parties (each, a "**Sponsor Guarantor**"), one or more Sponsor Guarantors may provide nonrecourse carve-out guaranties, environmental indemnities, completion guaranties and other recourse documents (each a "**Debt Guaranty**") required by a lender ("**Project Lender**") of the Company or a Company Subsidiary. The Company shall indemnify the Sponsor Guarantors for any amounts required to be paid under any such guaranties or indemnities, except to the extent resulting from the fraud, willful misconduct or gross negligence of a Sponsor Guarantor. Notwithstanding Section 9.04, any Sponsor Guarantor who consents to such guaranties will be entitled to a guaranty fee ("**Guaranty Fee**") in an amount as set forth on Exhibit B.

ARTICLE X
DETERMINATION OF FAIR MARKET VALUE

10.01 **Fair Market Value**. For purposes of Sections 7.06, 12.01 and 16.01, the Manager shall determine the "**Fair Market Value**" of the Property (i.e., the price the Property would be sold for cash by a willing seller, not compelled to sell, to a willing buyer, not compelled to buy, on a free and clear basis, unencumbered by any financing (including, without limitation, any deeds of trust, mortgages, ground leases (in connection with sale/leaseback financing) or other security instruments securing any financing) pursuant to Section 10.02 below. Any such determination will be made as of the date of the Promote Crystallization Election, the Redemption Election Date, or such date as determined by the Manager in connection with a Contribution Distribution (as applicable), and will be final, conclusive and binding on the Company and all Members (and their successors and assigns).

10.02 **Valuation Procedures**. The Fair Market Value shall determined, at Company expense, pursuant to one of the following procedures (selected by the Manager in its sole and absolute discretion):

(a) The Manager may engage two appraisers (the "**Appraisers**") that are not Affiliates of the Manager to each determine the Fair Market Value of the Property. Each Appraiser shall be a commercial appraiser and "Designated Member" in good standing of the Appraisal Institute (or any similar successor designation or organization), and selected in the sole and absolute discretion of the Manager. The Fair Market Value will be the average of the two appraisals provided by the Appraisers; provided, however, if the higher appraisal is more than 107% of the lower appraisal, the Manager shall instruct the two Appraisers to select a third Appraiser (meeting the same qualifications as the two initial Appraisers). Such third Appraiser shall determine the Fair Market Value of the Property, and the Fair Market Value of the Property shall be determined by averaging the two appraisals that are closest in value.

(b) The Manager may elect to engage a single "**Valuation Advisor**" (i.e., a reputable, nationally-recognized financial services provider or third-party valuation firm acting as unaffiliated valuation advisor) to provide a determination of the Fair Market Value of the Property. The Valuation Advisor shall be selected in the sole and absolute discretion of the Manager. The Manager shall instruct the Valuation Advisor to provide a reasonably detailed memorandum generally describing the support for such Valuation Advisor's determination of the Fair Market Value of the Property.

ARTICLE XI
RIGHTS AND OBLIGATION OF MEMBERS

11.01 **Members Have Limited Voting Rights**. Except as provided in Section 17.05, herein and/or as otherwise required by the Act, the Members shall not take part in or interfere in any manner with the conduct or control of the Company's business or have any voting rights or authority to act for or bind the Company.

11.02 **Limitation of Liability**. In no event shall a Member be liable, responsible or accountable in damages or otherwise to the Company, the other Members, or otherwise for any action taken or any failure to act on behalf of the Company within the scope of the authority conferred by this Agreement or by law, unless such action or failure to act was the result of fraud, willful misconduct or gross negligence.

11.03 **Company Debt Liability and Loan Guarantees**. Under no circumstances will a Member be liable for any debts or losses of the Company beyond its respective Capital Contribution or as otherwise required by law.

11.04 **Loans by Members or Manager to Company**. As and when determined by the Manager, the Manager and any Member (and any of their Affiliates) may loan money to, act as surety for, or transact other business with the Company, and, subject to other applicable laws, shall have the same rights and obligation with respect thereto as a Person who is not a Member, but no such transaction shall be deemed to constitute a Capital Contribution to the Company and shall not increase the Capital Account of any Member engaging in any such transaction. The interest rate and terms of any such shall be determined in the Manager's reasonable discretion, taking into account the need, urgency and use of funds, and the availability (or lack of availability) of loans from third parties. In addition, the Manager and its Affiliates may lend money to, act as a surety for, and transact other business with the Company or any Company Subsidiary and shall have the

same rights and obligations with respect thereto as a Person who is not a Manager of the Company, except that nothing contained in this Section 11.04 shall be construed to relieve a Manager from any duties to the Company.

11.05 **Outside Activity**. Without limitation on Section 9.06(b), each Member may engage in any capacity (as owner, employee, consultant, or otherwise) in any activity, whether or not such activity competes with or is benefited by the Project or the business of the Company without being liable to the Company or the other Members for any income or profit derived from such activity. No Member shall be obligated to make available to the Company or any other Member any business opportunity of which such Member is or becomes aware.

11.06 **Power of Attorney**. Each Member hereby grants to the Manager a power of attorney irrevocably making, constituting and appointing the Manager, with full power of substitution, as the true and lawful attorney-in-fact for such Member, with full power and authority to act in such Member's name and on such Member's behalf to make, execute, deliver, acknowledge, swear to, file and/or record the following:

(a) any certificate of formation, and any amendment to or restatement of any such certificate, which may be required to be filed in any jurisdiction in which the Company does business or owns property;

(b) any instrument or document which may be required to effect (i) the continuation of the Company, (ii) the admission to the Company of any additional or substituted Member (including any amendment to this Agreement required as a result thereof), (iii) the dissolution or termination of the Company, provided that such action is being taken in compliance with the provisions of this Agreement or (iv) any instrument or document which may be required to effect any conversion, merger, domestication, formation of any new Entity, issuance or redesignation of any class or series, exchange of Interests or Economic Interests, or other reorganization or restructuring transaction authorized pursuant to Section 13.08; and

(c) any amendment, the purpose of which is (i) to set forth the rights, obligations and participation in the Company of any additional Member admitted to the Company pursuant to this Agreement (including pursuant to Sections 5.01(a)(ii), 5.02 and 5.03), (ii) to set forth a Member's Capital Percentage as the same may be adjusted pursuant to this Agreement, (iii) to memorialize the adjustments and consequences of a Redemption, (iv) to effect, evidence, implement or otherwise facilitate the "tokenization" of Interests and/or Economic Interests and any related actions contemplated by Section 13.08 (including, without limitation, (A) the issuance, exchange, replacement, subdivision, combination, cancellation, burning or reissuance of any Tokens or other digital representations, (B) the establishment or maintenance of any blockchain, distributed ledger or other electronic register as the Company's official register, (C) the appointment of any registrar, transfer agent, administrator, custodian, platform provider, KYC/AML or sanctions compliance provider or other agent, (D) the adoption and enforcement of any legends, transfer restrictions, lock-ups, blackouts, whitelisting or other compliance procedures, and (E) any conversion, merger, domestication, formation of any new Entity, issuance or redesignation of any class or series, exchange of Interests or Economic Interests, or other reorganization or restructuring undertaken pursuant to Section 13.08), or (v) to reflect any change that does not adversely affect the Members in any material respect, to cure

any ambiguity, to correct or supplement any defective provision in this Agreement, or to make any other changes with respect to matters arising under this Agreement that will not be inconsistent with any other provision of this Agreement.

The power of attorney being granted by each Member hereunder (i) is coupled with an interest and is irrevocable; (ii) shall survive the transfer by such Member of all or any portion of its Interest; and (iii) shall survive the dissolution and termination of the Company. Any person shall be entitled to rely conclusively (without further evidence of any kind whatsoever) on any action taken or purported to be taken on behalf of any Member by its attorney-in-fact pursuant to the power of attorney granted hereunder as being fully binding upon such Member. Without limiting the generality of the foregoing, any person shall be entitled to rely conclusively on any agreement, document or instrument executed or purported to have been executed on behalf of any Member by the Manager (as its attorney-in-fact) as being fully binding on such Member, provided such agreement, document or instrument falls within the scope of this Section.

ARTICLE XII
PARTIAL REDEMPTION OF SPONSOR MEMBER

12.01 **Redemption Right**. The Sponsor Member may cause the Company to redeem a portion of the Sponsor Member's Promote Interest (the "**Redemption**") in connection with the earlier to occur of the date that (1) the first replacement Debt Financing is obtained by the Company or a Company Subsidiary that produces sufficient proceeds that would allow the Company to pay the Redemption Price entirely from such proceeds, taking into account the requirements of subsection (c) below (the "**First Eligible Refinance**"), and (2) is forty eight (48) months after December 4, 2025 (i.e., the date on which the Property was acquired by a Company Subsidiary), and such event that first occurs is herein referred to as the "**Redemption Trigger Date**").

(a) Redemption Election. Subject to the terms and conditions of this Article XII, including the limitations set forth in Section 12.02, the Sponsor Member may effect a one-time Redemption at any time beginning on the Redemption Trigger Date, and ending on the date that is six (6) months following such date. To effect a Redemption, the Sponsor Member shall notify the Manager that it desires to cause a Redemption and the percentage (the "**Redemption Percentage**") of the Promote Interest to be redeemed (the "**Redemption Election**").

(b) Price. The price (the "**Redemption Price**") for the Redemption is the amount which the Sponsor Member would receive pursuant to the Promote Clause if the Project were sold for an all cash price equal to the "Redemption Value", as defined in subsection (f) below, (without deduction for hypothetical closing costs), and the Company had been dissolved and liquidated immediately following such sale and the proceeds of such sale and the other assets of the Company, remaining after satisfaction of (or setting aside reserves for the expected payment of) the actual debts and liabilities (taking into account anticipated discounts and settlements, but without reduction for ordinary course working capital reserves and liabilities) of the Company, had been distributed to the Members in accordance with Section 7.02 (taking into account, if applicable, any additional offerings made pursuant to Section 5.03). The Redemption Price shall be determined as of the date the Redemption Price is paid.

(c) Method and Source of Payment. The Redemption Price may be paid from excess proceeds of a Debt Financing that would otherwise be distributed to the Members as Capital Event Cash Flow, Reserves, Mandatory Contributions, or any combination thereof. In the event that a Redemption occurs in connection with the First Eligible Refinance, then the Manager will determine the Capital Event Cash Flow that would otherwise be distributed to the Members pursuant to Section 7.02 from such Debt Financing and apply them as follows:

(i) The amount of such proceeds otherwise distributable to the Members (excluding the amounts distributable to the Sponsor Member in respect of the Promote Interest) shall first be used to pay the Redemption Price, and the remaining portion of such proceeds after payment of the Redemption Price shall be distributed to the Members pro rata to reduce each Member's Undistributed 8% Required Contribution Return, and thereafter in proportion to their Capital Percentages to reduce each Member's Undistributed Required Contributions as if distributed pursuant to Section 7.02; and

(ii) The amount of such proceeds otherwise distributable to the Sponsor Member shall be distributed to the Sponsor Member.

(d) Structure. The Sponsor Member shall distribute and assign direct interests in the portion of the Promote Interest being redeemed to the indirect beneficial owner(s) of such redeemed portion, and the Company shall cause the Redemption Price to be paid directly to such beneficial owner(s), unless the Manager determines, in its sole and absolute discretion, to pay the Redemption Price to the Sponsor Member.

(e) Modification to Article VII. Upon the closing of the Redemption, (A) the Promote Percentage in the Promote Clause shall be reduced by the Redemption Percentage, and shall be adjusted to equal the new Promote Percentage, and (B) the percentage of distributions to a Member under Section 7.02(b)(ii)(y) (the "**Non-Promote Residual Distribution Clauses**") shall be correspondingly increased. The Manager will endeavor to promptly give each Member written notice of such reduction in the Promote Percentage; provided that failure to give such notice shall not in any way affect or otherwise nullify the Redemption or its impact on the Promote Percentage. The Manager may, but shall not be required to, unilaterally amend this Agreement to memorialize the foregoing consequences of a Redemption (but the absence of any such amendment shall not in any way affect or otherwise nullify the adjustments made pursuant to this Article XII).

(f) Redemption Value. As used herein, the "**Redemption Value**" means the Fair Market Value of the Property as of the Redemption Election Date, as determined by the Manager pursuant to the process set forth in Article X.

(g) Example. Without limiting the generality the foregoing provisions of this Section 12.01, assume that there is a Redemption with a Redemption Percentage of 10%. In such a case, from and after such Redemption, the Promote Percentage would be reduced from 25% to 22.5% (i.e., reduced by the Redemption Percentage of 10%), and the percentage of distributions made pursuant to the Non-Promote Residual Distribution Clauses would be increased from 75% to 77.5%.

12.02 **Limitations**. The following limitations shall apply to this Article XII:

(a) No Redemption of Sponsor Principals. Neither of the Sponsor Principals shall have their direct or indirect interests in the Sponsor Member reduced or redeemed pursuant to this Article XII.

(b) Termination of Redemption Process. The Sponsor Member shall have the right to reduce the Redemption Percentage or stop the Redemption process, in which latter event no Redemption shall occur.

ARTICLE XIII
TRANSFERABILITY

13.01 **General**. Except as otherwise specifically provided herein, no Member or Economic Interest Owner shall, directly or indirectly, sell, assign, convey, gift, bequeath, encumber, pledge, hypothecate, exchange or in any way alienate or transfer (a "**Transfer**"), all or any part of its Interest or Economic Interest except with the prior written approval (which approval may be evidenced by written consent, electronic approval, platform-based approval, whitelisting, or other on- or off-blockchain authorization procedure adopted by the Manager pursuant to Section 13.08) of the Manager, which approval may be given or withheld in the Manager's sole and absolute discretion, or in accordance with the provisions of this Article XIII. Each Member and Economic Interest Owner hereby acknowledges the reasonableness of the restrictions on the transfer of Interests and Economic Interests imposed by this Agreement in view of the Company purposes and the relationship of the Members and Economic Interest Owners. Accordingly, the restrictions on Transfer contained herein shall be specifically enforceable. Without limitation on the foregoing, and notwithstanding Sections 13.02 or 13.07 below, no Member shall permit any Transfer of its interest, or of any direct or indirect interest in it, if such Transfer would cause the Company or any Company Subsidiary to breach any Debt Financing documents or Debt Guaranties without the Manager's consent. For the avoidance of doubt, (i) any sale, assignment, transfer or other disposition of any Token or other digital representation of an Interest or Economic Interest, and any sale, assignment, transfer or other disposition of, or grant of control over, the wallet, account or address in which any such Token or digital representation is recorded (or the private keys or other credentials thereto), shall be deemed a Transfer of the underlying Interest and/or Economic Interest for purposes of this Agreement, and (ii) the Company and the Manager may, in their sole discretion, conclusively rely on the Company's official register (including any blockchain or other electronic register maintained pursuant to Section 8.01 and/or Section 13.08) to determine ownership for all purposes hereunder

The provisions of this Article XIII shall be in addition to any other agreements entered into between one or more Sponsor Parties, on the one hand, and any of the Members, on the other hand, with respect to which a Sponsor Party (or its designee) acquires a right to purchase or agrees to purchase the Interest of any of the Members of the Company. Without limitation on the generality of the foregoing sentence, the Members hereby expressly agree that a Sponsor Party may enter into one (1) or more separate agreements (including, without limitation, option agreements, side letter agreements or any other written agreements, whether entered into before or after the Effective Date) (each, an "**Interest Agreement**") with one (1) or more of the Investor Members providing for the purchase and sale of the Investor Member's Interests in the Company. Upon the

purchase of an Investor Member's Interest in the Company by a Sponsor Party (or its designee), the purchaser of such Investor Member's Interest shall automatically be admitted as an Investor Member in the Company (unless such Sponsor Party is already a Member of the Company).

13.02 **Permitted Transfers**. Subject to Section 13.05:

(a) Sponsor Member.

(i) The Sponsor Member may Transfer all or any portion of its Interest and Economic Interest to any of its Sponsor Affiliates or to any other Member without the consent of the Manager.

(ii) The Sponsor Member may permit Transfers of direct or indirect interests in such Sponsor Member without notice to or consent of the Manager so long as, after such Transfer, such Sponsor Member is a Sponsor Affiliate.

(b) All Members.

(i) Each Member may Transfer all or any portion of its Interest or Economic Interest if all of the following conditions are satisfied: (A) prior written notice of such Transfer is given to the Manager; (B) the transferee executes and delivers to the Manager any documents, representations and warranties that the Manager reasonably requests; (C) the transferee is (1) the spouse, ancestor, lineal descendant, sibling (including all such persons made so by marriage or adoption) or stepchild of the transferor (in the case of a Member that is an individual); (2) a trust or an Entity, the majority interest of which is owned by a trust, for which only the foregoing Persons identified clause (1) are beneficiaries; or (3) the transferee consists of the same beneficial owners as the transferor (or a subset of the existing beneficial owners of the transferor); and (D) such Transfer is not otherwise prohibited by Section 13.05.

(ii) Each Member may permit Transfers of direct or indirect interests in such Member if all of the following conditions are satisfied: (A) prior written notice of such Transfer is given to the Manager, and (B) such Transfer does not cause, and such Member represents and warrants that such Transfer does not cause, any representation, warranty or covenant given by such Member to the Company or the Manager pursuant to this Agreement, its Subscription Agreement or otherwise, to fail to be true or correct.

13.03 **Substitute Members**.

(a) A Sponsor Affiliate who is a transferee of all or any part of the Interest from a Sponsor Member shall automatically be admitted as a Member to the Company with respect to the Interest so acquired.

(b) A transferee of all or any part of the Interest of a Member other than a Sponsor Member shall have the right to become a substitute Member only if (i) the Manager has approved such Transfer in writing, (ii) such transferee executes an instrument satisfactory to the Manager accepting and adopting the terms and provisions of this Agreement (including a provision whereby such transferee makes each of the representations and warranties set forth Article X and the Subscription Agreement of the transferor Member), and (iii) such transferee

pays any reasonable expenses incurred by the Company or Manager in connection with such transferee's admission as a substitute Member, each as determined by the Manager in its sole and absolute discretion.

13.04 **Effects of Transfer**.

(a) Unless otherwise agreed to by the Manager, any permitted Transfer of all or any portion of a Member's Interest in the Company will take effect immediately upon the execution of a counterpart of this Agreement by the transferee. Any permitted transferee of an Interest in the Company shall take subject to the restrictions on transfer imposed by this Agreement.

(b) Notwithstanding any attempted transfer of a Member's Interest in the Company in violation of this Agreement, the transferee shall have no right to participate in the management of the business and affairs of the Company or to become a Member, and such transferee shall only hold an Economic Interest.

13.05 **Certain Limitations**. Notwithstanding anything to the contrary contained herein:

(a) No Interest shall be the subject of a Transfer unless the registration provisions of the Securities Act of 1933, as amended (the "**Securities Act**") and all applicable state "blue sky laws" have been complied with or unless compliance with such provisions is not required, each Member recognizing that no Interest has been registered under Federal or state securities laws.

(b) No Transfer of an Interest may be made to any person or entity if (1) in the opinion of legal counsel to the Company (or in the Manager's determination), it could result in the Company being treated as an association taxable as a corporation; or (2) such Transfer is effected through an "established securities market" or a "secondary market (or the substantial equivalent thereof)", within the meaning of Section 7704 of the Code.

(c) No Transfer of an Interest may be made to any person or entity (1) if, in the opinion of legal counsel for the Company, such Transfer may result in the Company becoming an investment company under the Investment Company Act of 1940, as amended (the "**1940 Act**"); or (2) unless the transferee provides a legal opinion, if requested by the Manager (in its sole and absolute discretion), from a law firm and in form satisfactory to the Manager, to the effect that the Company will not constitute an investment company under the 1940 Act by reason of such Transfer.

(d) The Member understands that there may be significant consequences to the Company if any Member Transfers any portion of its Interest (including its Economic Interest) or permits a person or entity to acquire an interest in the Member without first complying with the provisions of this Agreement. Each Member agrees that all representations, warranties and agreements it makes to the Manager in connection with a Transfer will be full, complete and correct in all respects, and hereby agrees to indemnify, defend and hold harmless the Company, the Manager, and any of their Affiliates from and against any and all loss, damage or liability due to or arising out of (a) any untrue or inaccurate representation, warranty or

agreement of the Member contained in any document furnished in connection with a Transfer of an Interest, or (b) any breach by the Member of this Article XIII.

13.06 **Restriction on Resignation and Withdrawal; Forced Withdrawal.** Notwithstanding anything to the contrary contained herein or under the Act, no Member shall have the right to resign or withdraw from the Company. In the event a Member does resign or withdraw in violation of the foregoing provision, (i) the Company shall not be obligated to pay any amounts to the Member, nor to distribute any of the Property to the Member or any interest therein, (ii) the Member shall be deemed to have forfeited any rights to legal or beneficial ownership of its Interest, and (iii) the Company may recover damages from the resigning Member for breach of this Agreement. In addition, without limitation on the foregoing and notwithstanding anything to the contrary contained herein, upon the Manager's good faith determination that a Member has (w) made a false representation or warranty set forth in such Member's Subscription Agreement, (x) fails to perform any covenant contained in such Member's Subscription Agreement, (y) takes an action (including any failure to act) that results in the Company being in violation of or in noncompliance with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, or (z) fails to comply with Section 13.08 or any requirements established by the Manager pursuant thereto (including providing KYC/AML, OFAC/sanctions or other compliance information, wallet/address information, certifications, documentation, opinions, acknowledgements, or other deliverables reasonably requested in connection with any tokenization, transfer controls, recordkeeping, or related restructuring), or if the Manager, in its sole discretion, determines that circumstances or conditions exist that, based upon a past or present act (including any failure to act) of a Member, would permit a lender or other third party, as the case may be, to provide a notice of default to the Company or any Company Subsidiary under any Debt Financing documents or any third party agreement applicable to the Project, or such lender or third party, as the case may be, has provided actual notice of such default to the Company or a Company Subsidiary, the Manager may (1) withhold distributions otherwise payable to such Member, (2) deposit distributions otherwise payable to such Member in a holding account pending resolution of the matter or (3) require such Member to sell its Interest to the Company, withdraw from the Company as a Member and withhold all payment for such Member's Interest pending resolution of the matter or court order to make such payment. The purchase price for such Member's Interest upon such a required sale and withdrawal shall be an amount equal to the lesser of (A) such Member's Capital Contributions reduced by all distributions to such Member as of the date of such sale (but not counting any distributions of preferred returns), and (B) the FMV Withdrawal Value of such Member's Interest. For purposes of this Section 13.06, the "**FMV Withdrawal Value**" of a Member's Interest, at any time, means the amount to which such Member would be entitled if the Project were sold by the Company for its then fair market value, as determined by the Manager in its sole discretion acting reasonably (and not pursuant to Article X), and distributions of the net sale proceeds from such sale had been made in accordance with Section 7.02 of this Agreement.

13.07 Member Redemption. Any Member (who is not an Affiliate of the Manager) who desires to sell all or any portion of its Interest or Economic Interest to the Company may submit a written offer to the Manager to sell such interest to the Company, and the Manager, on behalf of the Company, may submit a written offer to any Member that is not an Affiliate of the Manager to cause the Company to purchase all or any portion of such Member's Interest or Economic Interest (in either case, a "**Member Redemption Offer Notice**"). The Member Redemption Offer Notice

shall state a purchase price for such Interest or Economic Interest and shall constitute an offer to sell or purchase, as applicable such Interest or Economic Interest. The actual purchase price (the "**Member Redemption Price**") and terms of payment (which may include cash or a promissory note, or a combination thereof) will be as agreed to by such Member and the Manager (on behalf of the Company). Neither a Member nor the Manager shall be obligated to accept a Member Redemption Offer Notice. The Manager shall have the right to use Company funds to pay the Member Redemption Price.

13.08 **Tokenization of Interests**.

(a) **Authority and Scope.** The Manager may, at any time and from time to time in its sole and absolute discretion, cause all or any portion of the Interests and/or Economic Interests to be "tokenized" or otherwise represented, evidenced or recorded through one or more blockchain-based tokens, book-entry tokens, digital "wrappers," or other digital instruments (each, a "**Token**"), whether implemented on a third-party platform or on a platform developed and operated by the Manager or an Affiliate of the Manager. Tokenization may apply to Interests, Economic Interests, or any subset thereof, and may be implemented in a purely book-entry manner (including through a digital wrapper) such that the Token functions solely as evidence/record of the applicable Interest and/or Economic Interest and not as a separate or additional security.

(b) **Irrevocable Advance Consent and Appointment of Manager as Attorney-in-Fact**. Each Member and each Economic Interest Owner hereby irrevocably and unconditionally: (i) consents to and approves any tokenization and any related action contemplated by this Section 13.08; (ii) acknowledges and agrees that no consultation with, notice to (except as the Manager may elect), or consent, approval, vote, authorization or objection right of any Member or Economic Interest Owner shall be required; and (iii) authorizes and appoints the Manager (and any Person designated by the Manager) as its attorney-in-fact (in addition to the power of attorney granted pursuant to Section 11.06) to take, in the name and on behalf of such Member or Economic Interest Owner, any and all actions and to execute, deliver and file any and all documents, instruments, certificates and agreements that the Manager determines to be advisable or necessary to implement, maintain, modify or unwind any tokenization, including, without limitation: (A) adopting and amending any tokenization procedures, protocols, smart-contract terms, and administrative processes; (B) establishing and maintaining the Company's official register of Interests and/or Economic Interests (or any class or series thereof) on a blockchain or other electronic ledger and designating such ledger as the Company's official register for purposes of this Agreement and the Act; (C) appointing one or more registrars, transfer agents, administrators, custodians, KYC/AML or sanctions compliance providers and other agents or service providers (including Affiliates of the Manager) and delegating authority to any such Person to administer Transfers and recordkeeping; (D) issuing, minting, exchanging, subdividing, combining, re-denominating, re-designating, cancelling, burning, reissuing, or replacing Tokens (including in book-entry form) and mapping Tokens to the corresponding Interests and/or Economic Interests; (E) imposing, modifying, and enforcing legends, transfer restrictions, lock-ups, blackouts, whitelisting, KYC/AML, OFAC and sanctions compliance procedures, investor qualification requirements and other compliance measures consistent with this Agreement; (F) adopting, executing, and delivering any amendment, restatement or supplement to this Agreement and any ancillary agreements, instruments, notices

or consents that the Manager determines to be advisable or necessary to implement this Section 13.08; and (G) effecting any conversion, merger, domestication, formation of any new Entity, formation of any feeder, holding company or special purpose vehicle, issuance or redesignation of any class or series of Interests or Economic Interests, exchange of Interests or Economic Interests, or similar reorganization or restructuring pursuant to subsection (h) below.

(c) **Not a Transfer, No Rights to Block, Waivers**.

(i) The issuance, exchange, replacement, cancellation, reissuance or book-entry recording of any Token, the establishment or maintenance of any blockchain or other electronic register, the appointment of any agent or service provider, and any other action taken by the Manager pursuant to this Section 13.08 shall not constitute a "Transfer" by any Member or Economic Interest Owner and shall not require any approval under Article XIII (unless the Manager elects otherwise in its sole discretion). No Member or Economic Interest Owner shall assert or claim that any action taken pursuant to this Section 13.08 is a Transfer requiring consent.

(ii) To the maximum extent permitted by the Act and other applicable law, each Member and each Economic Interest Owner hereby irrevocably waives and releases any and all rights it may have (whether under this Agreement, the Act or otherwise) to: (A) vote on, consent to, approve, object to or be consulted regarding any action taken pursuant to this Section 13.08; (B) seek appraisal, dissenters', withdrawal, dissociation, partition or similar rights or remedies arising from or relating to any such action; and (C) seek to restrain, enjoin or otherwise obtain injunctive or other equitable relief to delay, prevent or invalidate any such action; provided that nothing herein shall waive any right or remedy to the extent such waiver is prohibited by nonwaivable provisions of applicable law. Each Member and each Economic Interest Owner agrees that any breach or dispute relating to this Section 13.08 shall be remediable, if at all, solely by an action for monetary damages (subject to the limitations and exculpation provisions of this Agreement), and not by injunctive or other equitable relief, to the fullest extent permitted by applicable law.

(d) **Transfer Restrictions and Securities Laws.**

(i) Any Token and the Interests and Economic Interests represented thereby are and shall remain subject to all restrictions on Transfer set forth in this Agreement, including Article XIII and the legend set forth on the cover page, and shall be treated as "restricted securities" for purposes of the Securities Act unless and until otherwise determined by the Manager based on advice of counsel. No Token (or underlying Interest or Economic Interest) may be Transferred except in compliance with this Agreement and applicable federal and state securities laws. The Manager may require, as a condition to any Transfer (whether on-chain or off-chain), such representations, warranties, certifications, documentation and opinions of counsel as the Manager may require in its sole discretion, including to address Securities Act, Exchange Act, Rule 144, blue sky, and any other securities-law considerations or considerations under other applicable law.

(ii) Without limiting Article XIII, the Manager may impose and enforce, and may cause any Token smart contract and/or platform to implement, transfer-agent style controls, including Manager consent gates, whitelisting of permitted wallet/address/account

destinations, KYC/AML and OFAC/sanctions screening, lock-ups, blackouts, pauses, and other restrictions. The Manager may condition any Transfer on satisfaction of any procedures established by the Manager or any appointed agent.

(iii) No Member, Economic Interest Owner or other Person may list, quote, post, market, promote, facilitate or effect any Token or Interest for trading on any exchange, market, trading venue or facility (including any blockchain-based or digital-asset exchange, alternative trading system, decentralized exchange, automated market maker or similar arrangement) without the Manager's prior written consent, which may be withheld in the Manager's sole and absolute discretion. Any purported Transfer in violation of the foregoing shall be null and void and shall not be recognized by the Company or under applicable law.

(iv) The Manager shall have full discretion to implement tokenization in a manner intended to avoid causing the Company or any Company Subsidiary to be treated as a publicly traded partnership under Section 7704 of the Code (including by preventing Transfers through an "established securities market" or a "secondary market" (or the substantial equivalent thereof)) and to avoid causing the Company or any Company Subsidiary to become an investment company under the 1940 Act or to take on any other material obligations under applicable law. The Manager may, in its sole discretion, impose any restrictions, qualifications, limits on the number or type of holders, or other requirements it determines to be advisable for such purposes.

(e) **Transfers and Corrections.**

(i) The Company shall not recognize any Transfer of any Interest, Economic Interest or Token unless and until such Transfer has been approved (if required) and recorded on the Company's official register in accordance with this Agreement and any procedures established by the Manager. Any purported Transfer not so approved and recorded shall be null and void and of no force or effect as against the Company.

(ii) Without limiting any other right or remedy, the Manager (and any appointed agent) may refuse to record any Transfer, may place administrative holds on Transfers, and may take any action the Manager determines to be advisable to enforce restrictions or comply with law, including causing any Token smart contract and/or platform to: (A) freeze or pause Transfers, (B) block Transfers to or from any wallet/address/account, (C) burn, cancel or disable any Token, and/or (D) cause a "clawback," forced transfer or reissuance of a Token to a different wallet/address/account designated by the Manager (including in the case of an erroneous, fraudulent, unauthorized, or otherwise noncompliant Transfer), all to the fullest extent such functionality is available and lawful. Each Member and each Economic Interest Owner irrevocably consents to the foregoing.

(f) **Official Register; Agreement Controls.** Any Token, smart contract, platform terms, or distributed ledger record is and shall be subject to and governed by this Agreement. In the event of any conflict between: (i) this Agreement; and (ii) any Token, smart contract code, platform terms, user interface, or distributed ledger record, this Agreement shall control, and the Manager may conclusively determine the correct ownership and rights and may cause the Company's official register (including any blockchain or other electronic register) to be corrected accordingly. No Person shall acquire any rights in the Company greater than those

set forth in this Agreement by virtue of holding or receiving any Token.

(g) **Lost Keys; Compromised Wallets; Nominee/Book-Entry Holding.** The Manager may, in its sole discretion, establish procedures to address lost, stolen or compromised private keys, wallets or accounts. Without limitation, the Manager may require affidavits, indemnities, evidence of authority and identity, and completion of KYC/AML and sanctions checks prior to recognizing any replacement wallet/address/account or reissuing any Token. Pending satisfaction of applicable procedures, the Manager may cause Tokens (or the underlying Interests/Economic Interests) to be held in nominee or book-entry form (including through an omnibus wallet or account) for the benefit of the applicable holder, and may withhold or suspend processing of Transfers.

(h) **Restructuring to Facilitate Tokenization.** If the Manager determines that implementing tokenization requires or is advisable in connection with any conversion, merger, domestication, formation of a new Entity (including any feeder, holding company or special purpose vehicle), issuance or redesignation of any class or series, or other reorganization or restructuring, then: (i) the Manager may effect such transaction without any consent, approval or vote of any Member or Economic Interest Owner; (ii) each Member and Economic Interest Owner shall be deemed to have consented thereto and shall execute (or shall be deemed to have executed pursuant to Section 11.06 and subsection (b) above) any documents the Manager deems advisable or necessary; and (iii) the Manager shall seek to structure such transaction so that the relative economic entitlements of the Members to distributions under Article VII and allocations under Exhibit C are substantially preserved in all material respects and the limited liability of the Members is substantially preserved; provided that the Manager may make such changes as it determines to be advisable or necessary to comply with applicable law, regulatory guidance, tax requirements, or lender requirements and to implement the tokenization mechanics contemplated hereby.

(i) **No Obligation Discontinuation.** The Manager shall have no obligation to implement tokenization and may abandon, suspend or unwind any tokenization at any time in its sole and absolute discretion.

ARTICLE XIV
INTENTIONALLY OMITTED

ARTICLE XV
DISSOLUTION AND TERMINATION

15.01 **Dissolution**. The Company shall be dissolved upon the written election of the Manager ("**Dissolution Event**").

15.02 **Distribution of Assets Upon Liquidation**. Upon liquidation of the Company pursuant to Section 15.01 hereto, assets remaining after payment of or provision for all Company debts and obligations shall be distributed to the Members in the manner set forth in Section 7.02. In the discretion of the Manager, a pro rata portion of the amounts that otherwise would be

distributed to the Members under this Article may be withheld to provide a reasonable reserve for unknown or contingent liabilities of the Company.

15.03 **Winding Up**. Except as otherwise provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Manager, who is hereby authorized to take all actions necessary to accomplish such distributions, including, without limitation, selling any Company assets the Manager deems necessary or appropriate to sell.

15.04 **No Restoration of Deficit Capital Accounts**. If the Capital Account of any Member has a deficit balance after such distributions (after giving effect to all contributions, distributions, and allocations for all taxable years), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit and such deficit shall not be considered a debt owed to the Company or any other Person for any purpose whatsoever.

ARTICLE XVI
DISPOSITION THROUGH NON-CASH CONTRIBUTION

16.01 Without limitation on the Manager's authority to dispose of the Property pursuant to Section 9.03(f), in the event Manager determines to effect a disposition of the Property through a contribution (a "**Contribution Disposition**") of the Property to one or more entities (each, a "**Contribution Vehicle**") in exchange for equity interests in such Contribution Vehicle (other than a contribution to a direct or indirect wholly-owned subsidiary of the Company), then:

(a) Prior to consummating any such Contribution Disposition, the Manager shall obtain, at Company cost, a determination of the Fair Market Value of the Property pursuant to Article X (the "**Disposition Value**").

(b) Prior to consummating any such Contribution Disposition, each Member shall be offered the option to either (i) decline to receive a distribution-in-kind of equity interests in such Contribution Vehicle and instead elect to receive a cash distribution in connection with such Contribution Disposition, or (ii) elect to receive a distribution-in-kind of equity interests in such Contribution Vehicle. In connection with such offer, the Manager shall notify the Members of the Disposition Value and provide the material terms of the equity interests to be distributed in the Contribution Vehicle. The Members who elect to participate in any Contribution Disposition shall be referred to as the "**In-Kind Election Members**". A Member who fails to make the foregoing election shall be deemed to have elected to receive a cash distribution in connection with such Contribution Disposition.

(c) If, following the determination of the Disposition Value and the In-Kind Election Members pursuant to subsections 16.01(a) and 16.01(b) above, the Manager proceeds with any Contribution Disposition pursuant to this Article XVI, (i) the Manager may take such actions reasonably required in connection therewith, including, without limitation, (A) materially

amending this Agreement to create a suitable vehicle or arrangement for such transaction, (B) causing the In-Kind Election Members to receive, in exchange for such contribution, interests in such Contribution Vehicle as a distribution-in-kind (treating such interests as a distribution of Capital Event Cash Flow, and no longer having an interest in the Property through the Company), and (C) taking such other actions as Manager deems necessary for the express purpose of consummating the transaction or engaging in preparatory steps therefor, in each case, in accordance with the Act and applicable law, and (ii) the Members shall cooperate with the Manager to take such actions as reasonably required by the Manager to facilitate the transactions contemplated.

(d) Notwithstanding any notices sent or approvals received pursuant to this Article XVI, the Manager shall not be obligated to consummate a Contribution Disposition, and the Disposition Value (if any) shall not limit the Manager's authority to sell the Property to any Person that is not an Affiliate of the Manager for such price and on such terms as it determines in its sole discretion.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

17.01 **Notices**. Any notice or communication required or permitted to be given by any provision of this Agreement, including, but not limited to, any consents, shall be in writing and shall be deemed to have been given and received by the Person to whom directed (i) when delivered personally to such Person or to an officer or partner of the Member to which directed, (ii) one (1) Business Day after transmitted by electronic mail to the electronic mail address provided by such Person to the Company (which, in the case of Investor Members, is initially set forth in each such Member's Subscription Agreement), or (iii) three (3) Business Days after being posted in the United States mail if sent be registered or certified mail, return receipt requested, postage and charges prepaid, or one (1) Business Day after deposited with overnight courier, return receipt requested, delivery charges prepaid, in either case addressed to the Person at the address provided by such Person to the Company (which, in the case of Investor Member, is initially set forth in each such Member's Subscription Agreement).

17.02 **Governing Law**. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without considering Delaware choice of law provisions. Any conflict or apparent conflict between this Agreement and the Act will be resolved in favor of this Agreement except as otherwise required by the Act.

17.03 **Dispute Resolution**. Each Member acknowledges and agrees that the dispute resolution, arbitration, class action waiver, jury trial waiver, and related provisions set forth in the subscription agreement used by the Company for admission of Members (the "**Subscription Agreement Arbitration Provision"**) are hereby incorporated into this Agreement by this reference and shall apply to any Dispute (as defined in the Subscription Agreement Arbitration Provision) arising out of or relating to this Agreement, the Interests, the Company, or the offering of Interests, as if fully set forth herein. Each Member further agrees that: (i) this Section is intended to bind all Members, including any transferee or assignee, whether or not such Person executed an original Subscription Agreement; and (ii) as a condition to any transfer, the Manager may require the transferee to execute a joinder or acknowledgement confirming agreement to the Subscription

Agreement Arbitration Provision. In the event of any ambiguity or conflict regarding the terms of arbitration, the Manager may designate, in its reasonable good faith discretion, the controlling arbitration procedures.

17.04 **Waiver of Partition and Certain Other Rights**. Each of the Members irrevocably waives any right or power that it might have:

(a) to cause a dissolution, liquidation, termination or division of the Company or any Company Subsidiary;

(b) to cause the Company or any of its assets to be partitioned;

(c) to compel any sale of all or any portion of the assets of the Company under any applicable law;

(d) to cause the appointment of a receiver for all or any portion of the assets of the Company; or

(e) to file a complaint, or to institute proceedings at law or in equity, to cause the dissolution or liquidation of the Company, other than in accordance with this Agreement.

Each of the Members has been induced to enter into this Agreement in reliance upon the waivers of this Section 17.04, and without those waivers no Member would have entered into this Agreement.

17.05 **Amendments.** The Manager may unilaterally amend this Agreement pursuant to an express provision hereof (including, without limitation, pursuant to Section 5.03, Section 11.06(c), and Section 13.08). Any other amendment to this Agreement shall require the approval of the Manager, plus the approval of the Class A Members holding a Majority Interest (and if a Class A Member fails to timely respond to a request to approve a proposed amendment, the Manager may send a second request for such approval, and if such Class A Member fails to respond within five (5) Business Days of such second request, such Class A Member shall be deemed to have approved the proposed amendment). Any amendment adopted pursuant to this Section 17.05 may be evidenced by an amendment executed by the Manager as attorney-in-fact on behalf of the Members pursuant to Section 11.06. For the avoidance of doubt, any amendment, restatement or supplement that the Manager determines to be advisable or necessary to implement Section 13.08 (including any related conversion, merger, domestication, formation of any new Entity, issuance or redesignation of any class or series, exchange of Interests or Economic Interests, or other restructuring contemplated thereby) may be adopted by the Manager without any approval of any Member or Economic Interest Owner.

17.06 **Construction.** Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

17.07 **Certain Terminology**.

(a) Whenever the words "including", "include" or "includes" are used in this Agreement, they shall be interpreted in a non-exclusive manner as though the words ", without limitation," immediately followed the same.

(b) Except as otherwise indicated, all Article, Section and Exhibit references in this Agreement shall be deemed to refer to the Sections and Articles in, and the Exhibits to, this Agreement.

(c) Wherever the words "herein" or "hereunder" appear in this Agreement, they shall be interpreted to mean "in this Agreement" or "under this Agreement", respectively.

(d) As used herein: (1) "good faith" means "honesty in fact" as such phrase is used in the Uniform Commercial Code, as adopted in the State of Delaware as of the date of this Agreement; and (2) "reasonable efforts" or "commercially reasonable efforts" means the level of effort a reasonable person would exert under similar circumstances acting on its own behalf and shall require diligence and good faith but not illegal or other unreasonable actions.

17.08 **Waivers**. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

17.09 **Rights and Remedies Cumulative**. The rights and remedies provided by this Agreement are cumulative and the use of any one (1) right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

17.10 **Severability**. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

17.11 **Heirs, Successors and Assigns**. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

17.12 **Creditors**. None of the provisions of this Agreement shall be for the benefit of or enforceable by creditors of the Company.

17.13 **Manager's Counsel**. Each Member recognizes that Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("**Mintz**") (a) has not represented (and will not be representing) any Member in connection with this Agreement, or any other agreement in connection with the formation, organization or operation of the Company, (b) is acting as the attorney for the Manager in connection with the preparation, negotiation and execution of this Agreement, and (c) has not provided (and will not be providing) tax or other legal advice to any Member in connection therewith. Each Member is and will be relying on its own legal and tax counsel, to the extent such Member elects to do so, in connection with this Agreement. Each Member hereby waives any and

all potential conflicts of interest resulting from (i) Mintz's representation of the Manager in connection with the preparation, negotiation and execution of this Agreement, (ii) Mintz's representation of the Manager and its Affiliates in related or unrelated transactions, and (iii) Mintz's representation of the Company, the Manager or their Affiliates in the future on matters for which Mintz is retained as counsel by the Company, the Manager or their respective Affiliates. Each Member hereby agrees to execute and deliver to each of Mintz, the Company, the Manager or any of their respective Affiliates any additional documents or instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Section 17.13. The provisions of this Section 17.13 shall survive the expiration or other termination of this Agreement.

17.14 **Counterparts**. This Agreement may be executed and delivered in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. The delivery of an executed counterpart of this Agreement by facsimile or as a PDF or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

17.15 **Further Assurances**. The Members and the Company agree that they and each of them will take whatever action or actions as are deemed by counsel to the Company to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end, the Members and the Company agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement or any of the provisions hereof.

17.16 **E-Signatures**. This Agreement, any amendment, consent, approval, notice or other document or instrument to be executed by a Member or the Manager may be executed electronically using such protocols or procedures as determined or established by the Manager from time to time, and the parties hereto agree to be bound by such electronic executions.

17.17 **Entire Agreement**. This Agreement, each of the exhibits attached hereto and, if applicable, each Member's Subscription Agreement, any Interest Agreement or Side Letter (defined below) set forth all (and are intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the Company and supersede any prior agreement or understanding among them with respect to such subject matter (provided that a Subscription Agreement, Interest Agreement or a Side Letter constitutes part of the agreement only with respect the parties thereto). Notwithstanding any other provision of this Agreement, in addition to this Agreement and any Subscription Agreement or Interest Agreement, the Manager, in its own name or on behalf of the Company, may enter into side letter agreements or other written agreements, with any Member without the consent of any other Person, including any other Member (each a "**Side Letter**"), that may have the effect of establishing rights under, or altering or supplementing the terms hereof to such Member's interests or rights, including economic terms, and the terms of any such Side Letter or other agreement to or with a Member shall govern with respect to such Member (and only such Member) notwithstanding the provisions of this Agreement or the Subscription Agreements.

17.18 **Offering Materials.** Each Member acknowledges that the Company may provide one or more confidential investment memoranda, presentations, summaries, marketing materials, websites, investor portal content or other communications in connection with the offer and sale of Interests (collectively, "**Offering Materials**"). The Offering Materials are provided solely for informational purposes and do not constitute part of this Agreement and do not amend, modify or supplement this Agreement or any Member's rights or obligations hereunder. In the event of any inconsistency between any Offering Materials and this Agreement, this Agreement shall govern the rights and obligations of the parties. Nothing in this Section is intended to limit any rights or remedies that may be available under applicable federal or state securities laws.

17.19 **Confidentiality**. Each Member acknowledges and agrees that all information provided to such Member by or on behalf of the Company or the Manager concerning the business or assets of the Company or a Member (collectively, "**Confidential Information**") shall be deemed strictly confidential and shall not, without the prior written consent of the Manager, which consent may be withheld in the Manager's sole and absolute discretion, be (i) disclosed to any Person, or (ii) used by a Member for a purpose adverse to the Company, unless reasonably related to protecting such Member's interest in the Company and only after discussing the matter with the Manager (or its representatives) prior to its disclosure. Notwithstanding the foregoing, the Manager hereby consents to the disclosure by each Member of Confidential Information to (x) such Member's accountants, attorneys and similar advisors bound by a duty of confidentiality or (y) to such Member's own equity holders, provided that, as a condition to such disclosure, such Member informs its equity holders that any Confidential Information is subject to the confidentiality provisions of this Section 17.18. The foregoing requirements of this Section 17.18 shall not apply to a Member with regard to any information that is currently or becomes: (A) required to be disclosed pursuant to applicable law or a domestic national securities exchange rule (but in each case only to the extent of such requirement); (B) publicly known or available in the absence of any improper or unlawful action on the part of such Member; or (C) known or available to such Member via legitimate means (without breach of any confidentiality or non-disclosure restrictions) other than through or on behalf of the Company or the Manager. For purposes of this Section 17.18, Confidential Information provided by one Member to another shall be deemed to have been provided on behalf of the Company. The provisions of this Section 17.18 will survive for a period of three years from the date of dissolution of the Company. The provisions of this Section 17.18 were negotiated in good faith by the parties hereto and the parties hereto agree that such provisions are reasonable and are not more restrictive than is necessary to protect the legitimate interests of the Members and the Company.

[NO FURTHER TEXT ON THIS PAGE]

The undersigned hereby agrees, acknowledges and certifies that the foregoing constitutes the Amended and Restated Operating Agreement of MMF Red Hawk Investments, LLC, adopted by the Members of the Company to be effective as of the Effective Date.

Sponsor Member
In its capacity as a Member and accepting its designation as Manager

MMF Red Hawk Member, LLC
a Delaware limited liability company

By: Realberry Real Estate Services, LLC.
a Colorado limited liability company
its Manager

By: _____
Name: _____
Title: _____

Investor Members:

By: MMF Red Hawk Member, LLC,
in its capacity as attorney-in-fact for the Investor Members

By: Realberry Real Estate Services, LLC
a Colorado limited liability company
its Manager

By: _____
Name: _____
Title: _____

EXHIBIT "A"
INDEX OF DEFINED TERMS

EXHIBIT "B"
APPROVED MANAGER SERVICES AND COMPENSATION

FEE TYPE	MAX %	METHOD OF CALCULATION
ACQUISITION FEE	1.0%	Previously paid the Company, and applied to the purchase price of the Property.
RENEWAL OR REFINANCING FEE	0.5%	Applied to loan commitment amount. Payable at loan closing or as permitted by lender(s)
ASSET MANAGEMENT SERVICES	3.0%	Applied to monthly effective gross rents
DEBT GUARANTY FEE *Includes current and future payment guaranty amounts*	1.0%	The Company Debt Guaranty Fee was previously paid by the Company when the initial Debt Financing was obtained. The Debt Guaranty Fee was (and in the future may be) be applied to the amount guaranteed of any loan payment and any carry guaranty. The Debt Guaranty Fee would be payable at loan closing to the applicable guarantor entity.
DISPOSITION FEE	1.0%	Applied to total disposition sale price
Reimbursement for On-Site Costs: In addition to the fees noted herein, all costs associated with Associates of Manager or its Affiliates who perform work on-site, whether actually officed on-site or shared with other projects, but the work is performed onsite, will be reimbursed. Such reimbursement will be based on a salary or hourly rates for time actually worked on the project plus any direct expenses and indirect expenses, including benefits and bonuses and may also include an allocation of costs of regional maintenance supervisors.		

EXHIBIT "C"
TAX ALLOCATIONS AND AUDIT PROCEDURES

ARTICLE I DEFINITIONS

Capitalized terms used in this Exhibit shall have the meanings set forth below or in the Section of this Exhibit referred to below, except as otherwise expressly indicated or limited by the context in which they appear in this Exhibit. All terms defined in this Article I in the singular have the same meanings when used in the plural and vice versa. Capitalized terms used but not otherwise defined in this Exhibit shall have the meaning given to the same elsewhere in the Agreement.

"**Adjusted Capital Account**" shall mean, with respect to each Member, the Capital Account balance of such Member after giving effect to the following adjustments: (i) credit to such Capital Account the sum of (A) any amounts which such Member is obligated (or deemed obligated) to restore pursuant to any provision of the Agreement or this Exhibit, plus (B) an amount equal to such Member's share of Partnership Minimum Gain as determined under the Code and Regulations and such Member's share of Partner Nonrecourse Debt Minimum Gain as determined under the Code and Regulations; and (ii) debit to such Capital Account the items identified in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition is intended to comply with the applicable provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2.

"**Adjustment Year**" means any "adjustment year" of the Company as defined in Section 6225 of the Code.

"**Alternative Payment Procedures**" means the procedures described in Section 6226 of the Code.

"**Amended Return Procedures**" means the procedures described in Section 6225(c) of the Code.

"**Capital Interest Allocations**" shall mean allocations of Profits and Losses to the Realberry Member with respect to Capital Contributions made by the Realberry Member to the Company.

"**Gross Asset Value**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed (or deemed contributed under Code sections 704(b) and 752 and the Regulations promulgated thereunder) by a Member to the Company shall be the gross fair market value of such asset on the date of the contribution, as determined by the Manager or as otherwise provided in this Exhibit or the Agreement;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values as of the following times: (i) the acquisition of an interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the acquisition of an interest (other than a de minimis interest) in the Company by any new or existing Member in consideration of such Member's performance of services; (iii) the distribution by the Company to a Member of more than a de minimis amount of Company Property as consideration for an interest in the Company; (iv) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and (v) at such other times as the

Manager may agree, provided, however, that the foregoing adjustments shall be made only if they are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution;

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code section 734(b) or Code section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection to the extent that an adjustment is required pursuant to Section subparagraph (ii) above in connection with a transaction that would otherwise result in an adjustment under this subparagraph (iv);

(v) The Gross Asset Value of any Company asset shall be adjusted to reflect any cost recovery deductions claimed with respect to such asset, as described in the definition of "Profit" and "Loss".

"**Imputed Underpayment**" means the "imputed underpayment" as used in Sections 6221 through 6241 of the Code and Regulations or other administrative guidance promulgated thereunder.

"**Modified Adjusted Capital Account**" means, with respect to any Member for any fiscal year (or other period), an amount equal to such Member's Capital Account balance as of the beginning of such fiscal year (or other period), adjusted as provided in the definition of Capital Account for all contributions to the Company by, and all distributions by the Company to, such Member during such fiscal year (or other period), and by all special allocations pursuant to 2.04 of this Exhibit with respect to such fiscal year (or other period) but before giving effect to any allocations of Profits or Losses with respect to such fiscal year (or other period) pursuant to Section 2.02 of this Exhibit.

"**Nonrecourse Deductions**" shall be as described in Regulations Section 1.704-2(b).

"**NOPPA**" means a Notice of Proposed Partnership Adjustment sent to the Company by the IRS.

"**Partner Nonrecourse Debt**" shall have the meaning ascribed to such term in Regulations Section 1.704-2(b)(4).

"**Partner Nonrecourse Debt Minimum Gain**" shall be as determined under Regulation Section 1.704-2(b)(4).

"**Partner Nonrecourse Deductions**" shall be as determined under Regulation Section 1.704-2(i).

"**Partnership Minimum Gain**" shall have the meaning ascribed to such term in Regulation 1.704-2(d).

"**Profit**" and "**Loss**" for any Fiscal Year or other period shall mean an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) and the Regulations thereunder with the following adjustments:

(i) All items of income, gain, loss and deduction of the Company required to be stated separately shall be included in taxable income or loss;

(ii) Income of the Company exempt from U.S. federal income tax shall be treated as taxable income;

(iii) Expenditures of the Company described in Code Section 705(a)(2)(B) or treated as such expenditures under Regulation Section 1.704-1(b)(2)(iv)(i) shall be subtracted from taxable income;

(iv) Upon the happening of any event described in the definition of Gross Asset Value, the amount of any adjustment to the Gross Asset Value shall be treated as gain or loss from the disposition of the applicable asset;

(v) Gain or loss resulting from the disposition of Property from which gain or loss is recognized for U.S. federal income tax purposes shall be determined with reference to the Gross Asset Value of such Property;

(vi) Depreciation shall be determined based upon Gross Asset Value as provided in Regulation Section 1.704-1(b)(2)(iv)(g), 1.704-2 and 1.704-3 instead of as determined for U.S. federal income tax purposes;

(vii) Items which are specially allocated under this Exhibit shall not be taken into account; and

(viii) To the extent an adjustment to the Basis of any asset pursuant to Section 734(b) or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations in determining Capital Accounts, the amount of such adjustment will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses.

"**Reviewed Year**" means any "reviewed year" of the Company as defined in Section 6225 of the Code.

"**Target Capital Account**" means an amount (which may be either positive or negative), determined with respect to each Member for any fiscal year (or other period), equal to (a) the hypothetical distribution (if any) such Member would receive if each Company asset (including cash) were sold for an amount of cash equal to such asset's Gross Asset Value as of the end of such fiscal year, each liability of the Company were satisfied in cash in accordance with its terms (limited, with respect to each nonrecourse liability of the Company, to the Gross Asset Value of the asset or assets securing such nonrecourse liability), and all remaining cash of the Company (including the net proceeds of such hypothetical transactions and all cash otherwise available after the hypothetical satisfaction of all Company liabilities) were distributed in full on the last day of such fiscal year (or other period) to the Members pursuant to Section 7.02 of the LLC Agreement; minus (b) the sum of (i) such Member's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain immediately prior to such deemed sale, plus (ii) the amount, if any, which such Member is obligated to contribute to the capital of the Company pursuant to the terms of this Agreement as of the last day of such period (but only to the extent such capital contribution obligation has not been taken into account in determining such Member's share of Partner Nonrecourse Debt Minimum Gain).

"**Tax Matters Representative**" means the "partnership representative" and, as to such "partnership representative," the "designated individual" as those terms are used in the Code and Regulations or other administrative guidance promulgated thereunder.

ARTICLE II CAPITAL ACCOUNTS AND ALLOCATIONS

2.01 Capital Accounts. A separate Capital Account will be maintained for each Member in accordance with Regulation Section 1.704-1(b)(2)(iv). Consistent therewith, the Capital Account of each Member will be determined and adjusted as follows:

(a) Each Member's Capital Account will be credited with:

(i) Any contributions of cash made by such Member to the capital of the Company plus the Gross Asset Value of any property contributed by such Member to the capital of the Company (net of any liabilities to which such property is subject or which are assumed by the Company);

(ii) The Member's distributive share of Profits and items in the nature of income and gain allocated to such Member; and

(iii) Any other increases required by Regulation Section 1.704-1(b)(2)(iv).

(b) Each Member's Capital Account will be debited with:

(i) Any distributions of cash made from the Company to such Member plus the Gross Asset Value of any property distributed in kind to such Member (net of any liabilities to which such property is subject or which are assumed by such Member);

(ii) The Member's distributive share of Losses and items in the nature of loss and deduction allocated to such Member; and

(iii) Any other decreases required by Regulation Section 1.704-1(b)(2)(iv).

2.02 Allocation of Profits and Losses.

(a) Profits and Losses. Except as otherwise provided in this Article II, Profits and Losses for each fiscal year shall be allocated to the Members as necessary to cause each Member's Modified Adjusted Capital Account balance as of the end of such fiscal year to equal as nearly as possible such Member's Target Capital Account.

(b) Limitation on Losses. To the extent that any Member has or would have, as a result of an allocation of Loss (or item thereof), a deficit Adjusted Capital Account balance, such amount of Loss (or item thereof) shall be allocated to the other Members in accordance with Section 2.02(a), but in a manner which will not produce a deficit Adjusted Capital Account balance as to such Members. To the extent such allocation would result in all Members having a deficit Adjusted Capital Account balance, such Loss shall be allocated to the Realberry Member.

(c) Authority of Manager to Modify Allocations. Notwithstanding anything to the contrary in this Exhibit, the Manager may, allocate Profits, Losses, income, expenses, gains,

losses, deductions and credits of the Company in a manner different from the methodology set forth in this Exhibit so as to conform such allocations, in the sole discretion of the Manager, as nearly as practicable with the related distributions and expected distributions to each Member. The Manager, in consultation with the Company's tax advisor, is authorized to vary any and all of the tax allocation provisions of this Exhibit to the extent necessary in the judgment of the Manager to comply with any of the requirements of Section 704 of the Code and applicable Regulations. The Manager shall have the power and authority to make all accounting, tax and financial determinations and decisions with respect to the Company with respect to allocations.

2.03 General Provisions.

(a) The manner in which Capital Accounts are to be maintained pursuant to this Article II is intended to comply with the requirements of Section 704 of the Code and the Regulations thereunder. If in the opinion of the Company's accountants or tax counsel the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Article II should be modified in order to comply with Section 704 of the Code and the Regulations thereunder, then, notwithstanding anything to the contrary contained in the provisions of this Article II, the method in which Capital Accounts are maintained will be so modified; provided, however, that any change in the manner of maintaining Capital Accounts must not materially alter the economic agreement between or among the Members. The Manager shall also: (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 Section 1.704-1(b)(2)(iv)(q) of the Regulations, and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Exhibit not to comply with Section 1.704-1(b) of the Regulations; provided that, to the extent that any such adjustment is inconsistent with other provisions of this Exhibit and would have a material adverse effect on any Member, the Manager may not make such adjustment without the consent of such Member.

(b) If there is a change in any Member's Interest in the Company during a Fiscal Year, each Member's distributive share of Company items or any item thereof for such Fiscal Year shall be determined by any method and convention and as to any extraordinary items prescribed by the Code or the Regulations that takes into account the varying Member's Interests in the Company during such Fiscal Year, in each case, as determined by the Manager.

(c) The Members agree to report their shares of income and loss for U.S. federal income tax purposes in accordance with the provisions of this Exhibit.

2.04 Special Provisions.

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Article II, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by the Code and Regulations.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article II except Section 2.04(a), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, any Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, shall be allocated such amount of income and gain for such year.

(c) Qualified Income Offset. If a Member unexpectedly receives any adjustment, allocation or distribution, items of Company income and gain shall be specifically allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Code and Regulations, the Adjusted Capital Account deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 2.04(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 Section 2.03 and this Section 2.04 of this Exhibit tentatively have been made as if this Section 2.04(c) were not in this Exhibit.

(d) Gross Income Allocation. If any Member has an Adjusted Capital Account deficit at the end of any Fiscal Year, each 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 paragraph shall be made only if and to the extent that such Member would have an Adjusted Capital Account deficit in excess of such sum after all other allocations provided in this Section 2.04(d) have been made as if this paragraph and Section 2.04(c) above were not in this Exhibit.

(e) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions shall be allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

(f) Code Adjustment. To the extent that an adjustment to the U.S. federal income tax basis of any asset pursuant to Code and Regulations is required to be taken into account in determining Capital Accounts, the adjustment shall be treated (if an increase) as an item of gain or (if a decrease) as an item of loss, and such gain or loss shall be allocated to the Members consistent with the allocations of the adjustment pursuant to such Regulation.

(g) Allocations Relating to Taxable Issuance of Interest. Any income, gain, loss or deduction realized by the Company as a direct or indirect result of the issuance of an Interest by the Company (the "Issuance Items") shall be allocated among the Members, so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Exhibit to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

(h) Purpose and Application. The purpose and the intent of the special allocations provided for in Sections 2.04(a) through (g) are intended to comply with certain requirements of the Regulations, and such special allocations are to be made so as to accomplish that result. However, to the extent possible, the Manager, in allocating items of income, gain, loss, or deduction among the Members, shall take into account the special allocations in such a manner that the net amount of allocations to each Member shall be the same as such Member's distributive share of Profits and Losses would have been had the events requiring such special allocations not taken place; provided, however, that no allocation will be made pursuant to this Section 2.04(h) if (i) the special allocation had the effect of offsetting a prior special allocation or (ii) the special allocation likely (in the opinion of the Company's accountants or tax counsel) will be offset by another special allocation in the future (e.g., special allocations of Nonrecourse Deductions that likely will be subject to a subsequent "minimum gain chargeback" under Section 2.04(a)). The Manager shall apply the provisions of this Section 2.04 in whatever order the Manager reasonably believes will minimize any economic distortion that otherwise might result from the application of the special allocations.

(i) Allocations to Reflect Contributed Property. If a Member contributes property to the Company which has a difference in its U.S. federal income tax basis and its Gross

Asset Value on the date of its contribution, then all items of income, gain, loss and deduction with respect to such contributed property shall be shared among the Members, pursuant to Section 704(c)(l)(A) of the Code, solely for income tax purposes, so as to take account of the variation between the U.S. federal income tax basis of such property and its Gross Asset Value at the time of contribution. The Manager shall make any elections under Regulations Section 1.704-3 with respect to such property. Allocations pursuant to this Section 2.04(i) are solely for purposes of income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or distributions pursuant to any provision of this Exhibit or the Agreement. A Member who contributes property to the Company shall provide to the Manager such information as may be required to establish the U.S. federal income tax basis in the contributed property.

(j) Capital Interest Allocation. Capital Interest Allocations shall be identified by the Company as being separate and apart from allocations made to the Realberry Member with respect to distributions of promote interests or carried interests and the books and records of the Company shall reflect such bifurcated allocation. This Section 2.04(j) is intended to be applied in a manner so that Capital Interest Allocations qualify as "Capital Interest Gains and Losses" within the meaning of Regulations Section 1.1061-3(c).

ARTICLE III AUDIT PROCEDURES

3.01 The Manager shall be, or appoint, the "partnership representative" and the "designated individual" (as defined in Code Section 6223 and the Regulations thereunder). In the event that the aforementioned designated Tax Matters Representative ceases to serve as Tax Matters Representative (whether by virtue of such person resigning in a manner permitted by applicable law, being determined by the IRS to not be the Tax Matters Representative or otherwise), the Manager shall designate a new Tax Matters Representative. Each Member hereby consents to such designations as the Tax Matters Representative and shall, upon the request of the Tax Matters Representative, execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent.

3.02 In the event the Company is the subject of an income tax audit by any U.S. federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Representative is hereby authorized, empowered and directed to act for, and its decision will be final and binding upon the Company and each Member. Without limiting the foregoing, the Tax Matters Representative will have the right to extend the statute of limitations for assessing or computing any tax liability against the Company or compromise, settle or concede the amount of any partnership tax item. The Tax Matters Representative shall use its reasonable efforts to comply with the responsibilities outlined in the Code and Regulations and in doing so will incur no liability to any Member and shall be indemnified and held harmless by the Company for its efforts in complying with the responsibilities outlined in the Code and Regulations. The Tax Matters Representative (with the consent of the Manager) may employ accountants, tax counsel or other professionals in connection with any audit or investigation of the Company by the IRS or any other taxing authority and in connection with all subsequent administrative and judicial proceedings arising out of such audit. The Company shall reimburse the Tax Matters Representative for or otherwise bear all costs and expenses incurred by the Tax Matters Representative in its capacity as such as the expenses are incurred. Each Member shall cooperate (which, in the case of a Member that is a pass-through partner (as defined in Regulation Section 301.6241-1(a)(5)), single-owner trust or entity disregarded as separate from its owner for U.S. federal income tax purposes, shall include obtaining the cooperation of each of its partners or members and, in the case of multiple tiers of

pass-through partners, single-owner trust or disregarded entities, each indirect partners or members) with the Tax Matters Representative and do or refrain from doing (and cause any such member to do or refrain from doing) any and all things reasonably required by the Tax Matters Representative in connection with such audit or contest, administrative settlement, judicial review, or other resulting administrative or judicial proceedings. Each Member shall provide, and shall cause its direct and indirect owners and Affiliates to provide, such information as the Company may request such that the Company may adequately and accurately complete tax returns required to be filed by the Company and respond to enforceable administrative information requests (or discovery in litigation), and make tax elections.

3.03 Each Member shall file all U.S. and non-U.S., as applicable, tax returns with respect to such Member's distributive share of any item of the Company's income, gain, loss, deduction or credit in a manner consistent with the Company's U.S. and non-U.S., as applicable, tax treatment of such item.

3.04 Except to the extent prohibited by law, each Member hereby waives the right to participate in any administrative proceedings relating to the determination of partnership items at the Company level, except as otherwise approved by the Tax Matters Representative and as permitted by applicable law. Each Member who, with such approval and as permitted, elects to participate in such proceedings shall pay any expenses incurred by such Member in connection with such participation.

3.05 The Company shall elect out of subchapter C, chapter 63, of the Code, pursuant to Code Section 6221(b), unless such election is unavailable for any taxable year. In the case of any adjustment to an item of Company income, gain, loss, deduction or credit, (A) each Person who was a Member during any Reviewed Year whether or not such Person is a Member during the Adjustment Year (each such Person, a "**Reviewed Year Member**") shall report his, her or its allocable share of such adjustment on his, her or its U.S. federal income tax return pursuant to either the Amended Return Procedures or the Alternative Payment Procedures, as determined by the Manager in its sole discretion; and (B) if the Manager determines not to, or is unable to, elect the Alternative Payment Procedures, each Reviewed Year Member who fails to file an amended U.S. federal income tax return to report his, her or its allocable share of any adjustment, pay any tax due with such amended return pursuant to the Amended Return Procedures and provide proof of such filing and payment within 240 days of the date that the NOPPA was mailed shall indemnify the Company from and against any and all loss attributable to such Reviewed Year Member's allocable share of any Imputed Underpayment required to be paid by the Company, including any interest, penalty, other additions to tax, and all other costs and expenses (including reasonable attorney's fees) of any kind or nature that may be sustained or suffered by the Company related thereto. The Company shall allocate any deemed expense or distribution attributable to such loss to such Reviewed Year Member (or its successor or assignee) and the Company shall be entitled to recover such loss by any lawful means, including without limitation by offsetting such loss against amounts otherwise distributable to the Reviewed Year Member or the Reviewed Year Member's transferees or assignees.

3.06 The provisions of this Exhibit C shall survive the termination of the Company, the termination of any Member's Interest in the Company and the Transfer of Member's Interest or Economic Interest, and shall remain binding on the Member for as long a period of time as is necessary to resolve with the IRS or any other taxing authority any and all matters regarding the taxation of the Company or the Members. Each Member shall ensure that the Company has its correct mailing address at all times. Without limiting the foregoing and notwithstanding Section 17.05, the Manager may cause this Agreement to be amended as necessary or desirable in the event

of any further statutory amendments, Regulations, notices, revenue procedures, revenue rulings or other administrative guidance, interpreting or applying Sections 6221 through 6241 of the Code, as originally enacted in P.L. 114-74, and as may be amended, and including any Regulations or other administrative guidance promulgated thereunder.