

ORIGIN INCOMEPLUS FUND, LLC
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT

Managing Member
Origin Income Manager, LLC

January 1, 2022

THE LIMITED LIABILITY COMPANY INTERESTS (THE “UNITS”) CREATED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES ACT, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER APPLICABLE SECURITIES LAWS. THE SALE OR OTHER TRANSFER OF THESE UNITS REQUIRES THE MANAGING MEMBER’S CONSENT.

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ORIGIN INCOMEPLUS FUND, LLC
SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

This Second Amended and Restated Limited Liability Company Agreement (this “Agreement”) is made as of January 1, 2022 by and among the Members for the organization and operation of the above named limited liability company (the “Company”).

WITNESSETH

WHEREAS, the Company was formed on November 9, 2018, by means of filing a Certificate of Formation (the “Certificate”) with the Delaware Secretary of State;

WHEREAS, the Company has been governed pursuant to an Amended and Restated Limited Liability Company Agreement dated January 20, 2021 (the “Prior Agreement”) pursuant to which the Company calculated “Performance Allocation” (as such term is defined in the Prior Agreement) at the individual Unit holder level and separately with respect to each issuance of Units, pursuant to different “Series” (as defined in the Prior Agreement) of each Class of Units;

WHEREAS, the Managing Member seeks to amend and restate the Prior Agreement as of the date first written above and, for the avoidance of doubt, immediately subsequent to the conversion of multiple Series within a Class, if any, to the “Initial Class Series” pursuant to Section 4.1(b) of the Prior Agreement, such that, as of the date hereof, each Class has only one Series with a single High Water Mark, to reflect the calculation of the Performance Allocation at the Class level and regardless of the date of issuance of any particular Units in the manner set forth herein;

NOW, THEREFORE, in consideration of the covenants, conditions and agreements contained herein, the parties hereto hereby agree to amend and restate the Prior Agreement in its entirety as follows:

ARTICLE 1
DEFINITIONS

For purposes of this Agreement, the following terms have the meanings indicated (unless otherwise expressly provided herein):

“Accounting Period” of the Company (A) shall commence as of the effective date of this Agreement and on each of the following dates: (i) on the first day of each subsequent calendar month; (ii) as of the day that any Capital Contribution is accepted by the Company (if other than the first day of a calendar month); and (iii) as of the day (if other than the first day of a calendar month) immediately following any Tender Date or any distribution; and (B) shall end on (i) the day immediately preceding the beginning of the next Accounting Period, and (ii) the date of the dissolution of the Company. The Company shall make allocations of increases and decreases in its Net Asset Value as of the end of each Accounting Period.

“Administrative Fee” shall mean the Class-specific percentage applicable to a Member’s Capital Commitment, as specified in the Memorandum.

“Advisers Act” means the Investment Advisers Act of 1940, as amended, and the rules and regulations promulgated thereunder.

“Affiliate” means a Person that directly or indirectly, through one or more intermediaries, has control of or is controlled by, or is under common voting control with, the Person specified. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Aggregate Commission” is defined in Section 5.9(a).

“Agreement” is defined in the preamble.

“Bankruptcy” has the meaning given it in Section 18-101 of the Delaware Act.

“Beneficial Ownership” means ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms “Beneficial Owner,” “Beneficially Owns” and “Beneficially Owned” shall have the correlative meanings.

“Capital Account” means an individual capital account maintained for each Member pursuant to Section 8.1 hereof.

“Capital Call Notice” is defined in Section 4.2.

“Capital Commitment” with respect to any Member, means the aggregate amount of cash that such Member has agreed to contribute to the Company pursuant to its Subscription Agreement.

“Capital Contribution” means, with respect to each Member, the amount set forth in the books and records of the Company to reflect a contribution of capital to the Company by such Member pursuant to its Capital Commitment.

“Certificate” is defined in the Recitals.

“Charitable Beneficiary” means one or more beneficiaries of the Charitable Trust as determined pursuant to Section 11.6; provided, that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under one of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

“Charitable Trust” means any trust provided for in Section 11.6.

“Class” is defined in Section 4.1(a)(i).

“Class NAV” means, for each Class, the portion of the Company’s Net Asset Value attributable to such Class.

“Closing” is defined in Section 4.2(d).

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” is defined in the preamble.

“Company Confidential Information” is defined in Section 14.9.

“Contribution Date” is defined in Section 4.1(a)(ii).

“Constructive Ownership” means ownership of Units by a Person, whether the interest in the Units is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms “Constructive Owner,” “Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

“Credit Facility” means a credit facility under which the Company is an obligor and that is secured by, among other things, the unfunded or unutilized Capital Commitments of the Members.

“Credit Facility Contribution” means any Capital Contribution made for the purpose of paying principal, interest or other amounts payable to a Lender under a Credit Facility.

“Defaulted Amounts” is defined in Section 14.3.

“Defaulting Member” is defined in Section 14.3.

“Delaware Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time.

“Designated Account” means an account designated by a Lender into which all Capital Contributions, when called, are to be directly deposited by the Members.

“Designee” is defined in Section 12.1(e).

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, the related provisions of the Code, and the respective rules and regulations promulgated thereunder, in each case as amended from time to time, and judicial rulings and interpretations thereof.

“ERISA Plan” means any employee benefit plan subject to either Part 4 of Subtitle B of Title I of ERISA or Section 4975 of the Code.

“ERISA Member” means (a) any Member that is an ERISA Plan or whose assets are treated as “plan assets” for purposes of ERISA or Section 4975 of the Code, and (b) any Member that is a “governmental plan” as defined in Section 3(32) of ERISA, unless the governmental plan submits a written election to the Company at the time it acquires its Units to not be treated as an ERISA Member. A governmental plan described in clause (b) above that does not submit the

election referred to therein will be treated for purposes of this Agreement as if it were an ERISA Plan, and any opinion of counsel submitted by the governmental plan need not include any opinion that it is subject to ERISA, but rather may provide that if the governmental plan were subject to ERISA (whether or not that is the case), then the situation described in the opinion would occur.

“Excepted Holder” means a Person for whom an Excepted Holder Limit is created by this Agreement or by the Managing Member pursuant to Section 11.5.

“Excepted Holder Limit” means, provided that the affected Excepted Holder agrees to comply with the requirements established by this Agreement or by the Managing Member pursuant to Section 11.5 and subject to adjustment pursuant to Section 11.5, the limit established for an Excepted Holder by this Agreement or by the Managing Member pursuant to Section 11.5, which limit may be expressed, in the discretion of the Managing Member, as one or more percentages and/or number of Units, and may apply to one or more Classes of Units, or to all Classes of Units in the aggregate.

“Fiscal Year” shall mean the twelve (12) months commencing on January 1 and ending on December 31 of each calendar year.

“High Water Mark” is defined in Section 8.1(b)(ii)(A).

“Hurdle Amount” is defined in Section 8.1(b)(ii)(B).

“Indemnified Persons” is defined in Section 7.1.

“Investment Management Agreement” has the meaning set forth in Section 6.4(a) of this Agreement.

“Investment Manager” means Origin Investco, LLC, a Delaware limited liability company, the current investment manager of the Company, or any successor entity thereto appointed by the Managing Member performing similar functions for the Company.

“Investments” means any investment made directly or indirectly by the Company in real estate and real estate-related assets including, but not limited to (a) direct real estate investments, (b) private commercial real estate investment funds, (c) publicly-traded REITs and (d) commercial real estate debt investments.

“Lender” means the administrative agent, servicer, and each lender under a Credit Facility, together with their respective participants, successors, and assigns.

“Liquidator” is defined in Section 10.2.

“Lock-Up Period” is defined in in Section 5.3(b).

“Management Fee” is defined in Section 6.4(b).

“Managing Member” means Origin Income Manager, LLC, a Delaware limited liability company, or any other person or entity selected as the Company’s manager pursuant to the terms of this Agreement and Section 18-401 of the Delaware Act.

“Member” means a holder of Units of the Company who has been admitted as a member pursuant to the terms hereof.

“Memorandum” means the Company’s Confidential Private Placement Memorandum, as amended or supplemented from time to time.

“NAV per Unit” means for the applicable Unit of a particular Class, the Class NAV divided by the number of Units in such Class. For the avoidance of doubt, NAV per Unit will be separately computed with respect to each Class of Units.

“Net Asset Value” means the market value of the Company’s total assets, less an amount equal to all accrued debts, liabilities and obligations of the Company calculated as of the last day of each month or as of any other date of measurement, using such valuation methods as shall be adopted by the Managing Member and as amended or revised from time to time. All such valuation determinations will be binding and conclusive on the Company, all Members and their successors and assigns. Net Asset Value will be confirmed by an independent valuation agent on at least an annual basis. Where the context requires, the “Net Asset Value” of a Unit shall refer to the NAV Per Unit of such Unit.

“Net NAV Increase” is defined in Section 8.2(b)(ii)(C).

“Origination Fee” shall mean a financing coordination or origination fee payable by third parties in connection with the Company’s investment in certain real estate-related debt investments, such as mortgages, mezzanine and other forms of debt, and preferred equity.

“Other Event” shall mean any other event (including a change in capital structure or change in circumstances such as a change in the value of the shares of the REIT Subsidiary) other than the purported Transfer.

“Ownership Limit” means not more than 9.8% (in value or in percentage of Units, whichever is more restrictive) of the aggregate of the outstanding Units. The percentage and value of the outstanding Units shall be determined by the Managing Member in good faith, which determination shall be conclusive for all purposes hereof.

“Parallel Entity” means any parallel investment partnership, limited liability company or other similar entity either organized or accepted by the Managing Member, in its discretion, through which investors may participate in Investments, but the structure of which may differ from that of the Company. Parallel Entities will either (i) invest or be deemed to invest substantially all of their assets directly in the Company, (ii) invest proportionately in all transactions on effectively the same terms and conditions as the Company, except as necessary to address tax, regulatory or other investor considerations; provided, however, that a Parallel Entity may (a) have the ability to opt out of certain Investments, (b) have different economic terms than the Company and/or (c) invest alongside the Company through a joint venture investment vehicle that grants certain consent rights to the members thereof (including independent third parties), or (iii) invest in an

entity owned by the Company and the Parallel Entity, including the REIT Subsidiary, in proportion to their commitments to such entity, to make Investments. To the extent a Parallel Entity invests directly in the Company, the Company shall be responsible for the fees and expenses of such entity. To the extent that any Parallel Entities are established, the NAV for the Company and the Parallel Entities will be determined in the same manner and consolidated.

“Partnership Audit Provisions” means (i) Code Sections 6221-6241 (as enacted pursuant to the Bipartisan Budget Act of 2015, Pub. L. No. 114-74), as amended from time to time, (ii) any Treasury Regulations or other official guidance promulgated under or relating to such Code Sections, and (iii) any corresponding provisions of state or local income tax law.

“Partnership Representative” is defined in Section 9.8(c).

“Performance Allocation” means the allocation(s), if any, made or to be made under Section 8.1(b) of this Agreement from time to time.

“Performance Allocation Date” is defined in Section 8.1(b)(ii)(D).

“Performance Allocation Period” is defined in Section 8.1(b)(ii)(E).

“Person” means an individual or a corporation, partnership, limited liability company, limited liability partnership, trust, estate, unincorporated organization, association or other entity.

“Plan Asset Regulations” means U.S. Department of Labor rules and regulations, including 29 C.F.R. § 2510.3-101 *et seq.*, as amended by Section 3(42) of ERISA, that address the applicability of ERISA to entities in which employee benefit plans directly or indirectly invest.

“Prior Agreement” is defined in the Recitals.

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

“Prohibited Owner” means, with respect to any purported Transfer (or Other Event), any Person who, but for the provisions of Section 11.1(c), would Beneficially Own or Constructively Own Interests in violation of the provisions of Section 11.1(c).

“REIT Subsidiary” means OI+ REIT, LLC, a Delaware limited liability company, or any other subsidiary of the Company that has elected to be taxed as a real estate investment trust under the Code (“REIT”).

“Restriction Termination Date” means the first day on which the board of the REIT Subsidiary determines that it is no longer desirable for the REIT Subsidiary to continue to qualify as a REIT or that compliance with any of the restriction and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Units set forth in Article 11 is no longer required in order for the REIT Subsidiary to qualify as a REIT.

“Subscription Agreement” means the subscription documents attached as Exhibit B to the Memorandum whereby an investor may subscribe for the Units being offered pursuant to the Memorandum.

“Supplement” is defined in Section 4.1(a)(i).

“Tax Indemnitee” is defined in Section 9.8(d).

“Tender Date” is defined in Section 5.2(a).

“Tender Offer” is defined in Section 5.2(a).

“Total Return” is defined in Section 8.1(b)(ii)(F).

“Trailing Commission” is defined in Section 5.9(a)(ii).

“Transaction Fees” means the Company’s proportional share of transaction, property management, directors, consulting, monitoring, “break-up” or similar fees (whether in the form of cash, securities or otherwise) earned by the Managing Member or Investment Manager as a result of, or arising out of, any investment made by the Company; provided that such amounts are, in each case, net of any amount necessary to reimburse the Managing Member, Investment Manager or any of their respective Affiliates or employees for all costs and expenses incurred by them in connection with any activities or operations generating any such fees which have not been previously reimbursed. Transaction Fees, for avoidance of doubt, shall not include Acquisition Fees or Origination Fees.

“Transfer” means any sale, transfer, assignment, gift, bequest, donation, pledge, hypothecation, encumbrance, mortgage, assignment as collateral, or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by realization upon any encumbrance, by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings).

“Treasury Regulations” means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Trustee” means the Person unaffiliated with the Company and a Prohibited Owner, that is appointed by the Company to serve as trustee of the Charitable Trust.

“Unit” means a “limited liability company interest” in the Company, as that term is defined in the Delaware Act. As provided herein, Units shall be issued in separate Classes.

“Upfront Commission” is defined in Section 5.9(a)(i).

ARTICLE 2 GENERAL PROVISIONS

2.1 Formation

The Company has been organized as a Delaware limited liability company by executing and delivering the Certificate to the Secretary of State of the State of Delaware in accordance with and pursuant to the Delaware Act.

2.2 Name

The Company's name shall be Origin IncomePlus Fund, LLC. However, the Company's business may be conducted under any other name designated in writing by the Managing Member.

2.3 Principal Place of Business

The principal place of business of the Company will be 121 West Wacker Drive, Suite 1000, Chicago, Illinois 60601. The Company may locate its places of business at any other place or places as the Managing Member may deem advisable.

2.4 Registered Office and Registered Agent

The Company's initial registered office is at the office of its registered agent at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle, and the name of its initial registered agent is The Corporation Trust Company. At any time, the Managing Member may designate another registered agent and/or registered office.

2.5 Term

The term of the Company will be perpetual, unless terminated earlier (i) upon the terms of this Agreement, or (ii) by operation of law.

2.6 Records

The Company will maintain records and accounts of its operations and expenditures. At a minimum, the Company will keep at its principal place of business the following records:

- (a) a current list of the full name and last known business or mailing address of each Member;
- (b) a copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendments have been executed;
- (c) copies of the Company's financial statements and federal, state and local income tax returns and reports, if any, for the three (3) most recent years; and
- (d) copies of the Company's currently effective written Agreement, as amended.

**ARTICLE 3
BUSINESS OF COMPANY**

3.1 Business of the Company

(a) The business of the Company will be:

(i) to originate, invest in, acquire or own Investments, whether directly or indirectly through the REIT Subsidiary, Parallel Entity and/or other special purpose vehicle(s); and

(ii) to carry on any other lawful business or activity in connection with the foregoing or otherwise, and to have and exercise all of the powers, rights and privileges that a limited liability company organized pursuant to the Delaware Act may have and exercise.

(b) No provision in this Agreement shall be construed as guaranteeing the return, either by the Managing Member or by the Company, of all or any part of any Member's Capital Contributions.

**ARTICLE 4
CONTRIBUTIONS TO THE COMPANY**

4.1 Units; Classes; Certificates

(a) Classes.

(i) Units may be issued in one or more classes (each, a "Class"), with each such Class having such relative rights, powers and duties as may from time to time be established by the Managing Member, so long as such relative rights, powers and duties do not adversely affect any of the rights, powers and duties of any Members who are Members at the time of the creation of such Class. The Managing Member may amend, without the consent of any of the Members, the terms and provisions of this Agreement to reflect such relative rights, powers and duties as are applicable to such Class or Classes which have been created pursuant to this Agreement. Each Class may be offered by a separate "Supplement" to the Memorandum and/or an amendment to this Agreement. As of the date hereof, there are four Classes of Units: Class I, Class INV, Class T and Class E, the terms for which are described in the Memorandum.

(ii) Within each Class, unless the Managing Member determines otherwise, Units will be issued on the date of each Capital Contribution (each, a "Contribution Date"). Units will be issued at the NAV per Unit as calculated from the Net Asset Value of the Company determined as of the last day of the month preceding such issuance.

(b) Net Asset Value of Existing Units. For the avoidance of doubt, Units outstanding as of the date hereof shall have a NAV per Unit equal to the NAV per Unit attributable to such Units immediately prior to the date hereof.

(c) Records. The number and Class of Units owned by each Member in the Company will be set forth in the books and records of the Company. The Managing Member may make such rules and regulations as it may deem appropriate concerning the issuance and registration of the Units, including the issuance of certificates representing the Units. Unless the Managing Member resolves otherwise, the Units will be issued without certificates.

4.2 Capital Commitments

(a) Subject to Section 14.3 and this Section 4.2, (i) each Member shall make contributions to the capital of the Company in an aggregate amount no greater than its Capital Commitment by contributing installments in cash when and as called by the Managing Member upon at least ten (10) days' prior written notice (a "Capital Call Notice"), provided that any call for Capital Contributions made in connection with the Closing where such prospective investor becomes a Member may be made on shorter notice, (ii) each Capital Contribution shall be made by wire or ACH transfer (or other method acceptable to the Managing Member in its sole discretion) of immediately available funds to a bank account designated by the Managing Member, or during the duration of a Credit Facility, to a Designated Account, and (iii) the Managing Member will be required to call the entire amount of the unfunded Capital Commitment of a Member made at a particular Closing (as specified in such Member's Subscription Agreement) before calling any portion of the unfunded Capital Commitment of any Member made at a subsequent Closing; provided further, that unfunded Capital Commitments made by Members at a particular Closing will be drawn down pro rata (based upon unfunded Capital Commitments made at that Closing) among the Members which made such unfunded Capital Commitments.

(b) The Administrative Fee shall be payable to the Managing Member upon each Capital Contribution and will reduce the amount of Units purchased by the Member at the time capital is called. The Managing Member may waive (in whole or in part) its right to receive the Administrative Fee with respect to certain Members in its sole discretion. The Managing Member may assign its right to receive all or a portion of the Administrative Fee to an Affiliate of the Managing Member or any other third party in its sole discretion.

(c) Notwithstanding Section 4.2(a)(i), but subject to Section 4.2(d), a Member may be required to make a Credit Facility Contribution. A Member's obligation to make a Credit Facility Contribution shall be without defense, counterclaim or setoff of any kind, but shall in all events be subject to Sections 4.2(a)(ii) and (iii). In the event a Member makes a Credit Facility Contribution, such Contribution shall be treated as a Capital Contribution and a purchase of Units by the Member.

(d) Once the Company has called a Member's Capital Commitment, and subject to Section 9.1 and Section 9.8, no Member will be required to make additional Capital Contributions to the Company. The Managing Member, in its sole and absolute discretion, may accept additional cash Capital Commitments from new or existing Members at any time (each acceptance of Capital Commitments, a "Closing"). Subject to waiver in the Managing Member's sole discretion, no Member may be permitted to make a Capital Commitment of less than one hundred thousand dollars (\$100,000) or increase an existing Capital Commitment in increments of less than ten thousand dollars (\$10,000). Any minimum investment in Units that a Member may make by way of additional Capital Commitment shall be set forth in the Memorandum. Additional Capital Commitments may be rejected, in whole or in part, and Closings may be suspended by the Managing Member in its sole discretion.

4.3 Interest on and Return of Capital Contributions

Except as otherwise specifically set forth in this Agreement, no Member will be entitled to interest on its Capital Contributions or to a return of its Capital Contributions.

ARTICLE 5 RIGHTS AND OBLIGATIONS OF MEMBERS; MEETINGS

5.1 Limitation of Liability; No Voting Rights

Except as expressly provided in Section 9.8, no Member will be personally liable to the Company's creditors for any of the Company's debts, obligations, liabilities or losses, whether arising in contract, tort or otherwise, beyond such Member's Capital Commitment under Section 4.2 and such Member's share of the assets and any undistributed profits of the Company; provided, however, that under applicable law a current or former Member may under certain circumstances be liable to the Company to the extent of previous distributions and returns of capital if the Company does not have sufficient assets to discharge its liabilities. No Member, in its capacity as such, has the authority or the power to act for or on behalf of the Company, to do any act that would be binding on the Company, or make any expenditures or incur any indebtedness on behalf of the Company. Unless otherwise required by the Delaware Act or as provided in this Agreement, no Member shall have the right to vote on any matter with respect to the Company.

5.2 Repurchase of Units

(a) Except as otherwise provided in this Agreement, no Member or other Person holding Units shall have the right to withdraw from such Person's Capital Account or to cause the Company to repurchase such Member's Units. The Managing Member from time to time (each such date, a "Tender Date") shall cause the Company to repurchase Units pursuant to written tenders (each, a "Tender Offer") delivered to the Members other than Defaulting Members. In connection therewith, the Managing Member may adopt such procedures as it deems to be fair and equitable, including procedures for providing the Members with written notice of the Tender Offer, the time period during which Members may accept the Company's Tender Offer, and the aggregate maximum amount or value of Units that the Company will purchase in the Tender Offer. The Company intends to issue

Tender Offers no less than once per quarter; however, the Company will not issue Tender Offers on more than four occasions during any one Fiscal Year unless the Company has been advised by its advisors that more frequent offers would not cause any adverse legal, tax or other consequences to the Company or the Members. In determining whether to issue a Tender Offer, the Managing Member shall consider the following factors, among others:

- (i) whether any Members have requested to withdraw from the Company; provided, for the avoidance of doubt, no Member shall be entitled to withdraw from the Company on demand;
- (ii) the liquidity of the Company's assets;
- (iii) the investment initiatives and working capital requirements, including current and anticipated reserves, of the Company;
- (iv) the frequency and history of the Company's prior Tender Offers;
and
- (v) legal, regulatory, administrative, tax and other operational considerations of any proposed Tender Offer.

(b) The Managing Member shall cause the Company to repurchase Units pursuant to a Tender Offer only on terms determined by the Managing Member to be fair to the Company and to all Members, as applicable, and otherwise in a manner consistent with applicable law.

(c) A Member who tenders for repurchase only a portion of the Member's Units will be required to maintain a Capital Account balance not less than an amount as may be fixed from time to time by the Managing Member, in its sole discretion, as the Company's minimum investment, if any. If a Member tenders an amount that would cause the Member's investment balance to fall below the required minimum, the Company reserves the right to reduce the amount to be purchased from the Member so that the required minimum balance is maintained or to repurchase all of the tendering Member's Units.

(d) Subject to Section 11.1(c), and notwithstanding anything to the contrary in this Section 5.2 or Section 5.3, the Managing Member, in its sole and absolute discretion, may require the whole or partial repurchase of the Units of any Member for any reason whatsoever at any time upon prior written notice to the Member including, by way of example and without limitation, if the Managing Member has determined that (i) such Units are held for the benefit of, or by, any person that, at the time of investment, did not meet any eligibility standard set by the Managing Member, (ii) the aggregate value of the Units held by the Member is less than a minimum amount determined from time to time by the Managing Member, (iii) the ownership of such Units by the Member is unlawful or may be harmful or injurious to the business or reputation of the Company, the Managing Member or the Investment Manager, (iv) such Member's participation in the Company could result in adverse tax or regulatory consequences for the Company or the REIT Subsidiary, (v) such Member attempted to Transfer all or a portion of its Units other than

pursuant to this Agreement, or (vi) any litigation is commenced or threatened against the Company, the Managing Member or the Investment Manager arising out of or relating to the participation of such Member in the Company. In the event of any repurchase pursuant to this Section 5.2(d), such Member's Units shall continue at the risk of the Company's business until repurchased by the Company.

(e) In connection with any Tender Offer, Units will be valued for purposes of determining their repurchase price as of the Tender Date, but shall not include any unearned income from the Company's Investments. Units to be repurchased pursuant to this Section 5.2 shall be tendered by the electing Members, and payment for such Units shall be made by the Company, at such times as the Company shall set forth in its notice to the affected Members.

(f) Payments in connection with a Tender Offer will be made in one or more installments based on the Company's liquid assets. The Managing Member shall not be required to liquidate any Investments or other assets in order to fund a Tender Offer. In the event a Tender Offer is oversubscribed, Tender Offer payments will be made to electing Members pro rata based upon their Capital Contributions. The portion of each electing Member's Units that was not repurchased by the Company pursuant to an oversubscribed Tender Offer shall be repurchased, if the electing Member so elects, in priority to other Units that may be tendered in connection with a subsequent Tender Offer.

(g) To the extent one or more payments are made pursuant to a Tender Offer prior to the completion of the annual audit of the Company's financial statements for the Fiscal Year in which there was a Tender Date, the Company may determine the final purchase price for the applicable Units, and reconcile any prior payments made on account thereof, to reflect such audit.

(h) The repurchase of Units pursuant to a Tender Offer shall be deemed to be effective as of the applicable Tender Date (except as may be required by Code Section 736). Each electing Member's Units, shall be reduced pro rata by the percentage of such Member's Units repurchased as of such date; provided, that the electing Member's unfunded Capital Commitment and other obligations under this Agreement (including without limitation under Section 9.8(d) and Section 12.1), shall remain unchanged. The provisions of this Section 5.2(g) shall apply in respect of each repurchase of Units pursuant to a Tender Offer.

(i) For the avoidance of doubt, the proceeds payable to electing Members in connection with a Tender Offer shall be subject to reallocation between the electing Members and the Managing Member in accordance with Section 8.1(b).

(j) Subject to Section 11.1(c), the Managing Member may cause the Company to redeem all or any portion of its Units at any time or from time to time. Any such withdrawal shall not be subject to the restrictions in Section 5.2 or Section 5.3.

5.3 Limitations on Repurchases

(a) No payments in connection with a Tender Offer will be permitted if the liabilities of the Company would exceed the value of the assets of the Company following such repurchase.

(b) A Member may not tender Units pursuant to any Tender Date occurring within twelve (12) months from the date of the Capital Contribution received by the Company to purchase such Units, measured on a first-in-first-out basis (the “Lock-Up Period”). For the avoidance of doubt, a separate Lock-Up Period will apply to each Capital Contribution to acquire Units. Notwithstanding the foregoing, the Managing Member may, in its sole and absolute discretion allow certain Members to tender all or any portion of their Units at a time prior to the expiration of any applicable Lock-Up Period.

(c) Any repurchase of Units pursuant to a Tender Offer shall be subject to a discount based on the length of time the repurchased Units were held by the participating Member as of the Tender Date, measured from the Contribution Date at which the repurchased Units were issued on a first-in-first-out basis. The repurchase price payable after application of the discount, expressed as a percentage of the proceeds otherwise payable, shall be as follows: (i) ninety percent (90%) for Units held for two years or less; (ii) ninety-two and one half percent (92.5%) for Units held for longer than two years but for three years or less; (iii) ninety-five percent (95%) for Units held longer than three years but for four years or less; (iv) ninety-seven and one half percent (97.5%) for Units held longer than four years but for five years or less; and (v) one hundred percent (100%) for Units held longer than five years. The discount shall be waivable or subject to reduction in the Managing Member’s sole discretion.

(d) The Company may offset damages for breach of this Agreement by, or other obligations of (including pursuant to the applicable Subscription Agreement), a Member whose Units are repurchased against the amount otherwise distributable to such Member pursuant to this Section 5.2.

(e) The Managing Member may, in its sole and absolute discretion, determine to suspend the determination of Net Asset Value and the right, if granted herein, of each Member to have the Company repurchase all or a portion of such Member’s Units during any period when: (i) there exists any state of affairs which, as determined by the Managing Member in its sole discretion, constitutes an emergency as a result of which disposition of the assets of the Company would not be reasonably practicable or could be seriously prejudicial to the Members; (ii) when for any reason the prices or values of any Investments of the Company cannot reasonably be promptly and accurately ascertained; (iii) if, in the Managing Member’s sole discretion, permitting such repurchase could cause the requirements of Section 11.1(c) to be violated; (iv) if, in the Managing Member’s sole discretion, permitting such repurchase could jeopardize the tax status of the Company (including the Company’s status as a partnership other than a “publicly traded partnership” under Section 7704 of the Code) or the REIT Subsidiary; or (v) in any other circumstances that the Managing Member deems necessary or appropriate in its sole discretion. Any suspension of Tender Offers or delay of payment of tender proceeds will be applied on a

pro rata basis across the Company to all eligible Tender Offers, as applicable made with respect to a particular Tender Date.

(f) The Managing Member shall have the right to restrict Tender Offer payments to an accepting Member at any time if the Managing Member deems such action necessary, in its sole and absolute discretion, to comply with applicable anti-money laundering regulations.

5.4 Company Books

The Managing Member will maintain and preserve at the Managing Member's principal place of business, during the Company's term, the accounts, books and other relevant Company documents. In accordance with the Delaware Act, each Member and its duly authorized representative may have the right, at a time during ordinary business hours as reasonably determined by the Managing Member, to inspect and copy such Company documents (at the requesting Member's expense) that the requesting Member deems appropriate for any purpose reasonably related to the requesting Member's interest in the Company; provided, however, the Managing Member shall have the right to keep confidential from the Members, for such period of time as the Managing Member deems reasonable, any information that the Managing Member reasonably believes to be in the nature of trade secrets, Member identifying information or other information the disclosure of which the Managing Member in good faith believes is not in the best interests of the Company or its Members or could damage the Company business or which the Company is required by law or by agreement with a third party to keep confidential.

5.5 Priority and Return of Capital

Except as may be expressly provided in this Agreement, no Member will have priority over any other Member, either as to the return of Capital Contributions or as to net profits, net losses or distributions.

5.6 No Preemptive Rights

Except as otherwise provided in this Agreement, no Member will have any preemptive or preferential right, including any such right with respect to (a) additional Capital Contributions; (b) issuance or sale of Units, whether unissued or hereafter created; (c) issuance of any obligations, evidences of indebtedness or other securities of the Company convertible into or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such unissued Units; (d) issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing securities; or (e) issuance or sale of any other securities that may be issued or sold by the Company.

5.7 Resignation

No Member will have the right to voluntarily resign as a Member of the Company prior to the Company's dissolution and winding up, provided that a Member may tender all or any portion of its Units in accordance with Article 5 of this Agreement.

5.8 Meetings

Meetings of the Members, for any purpose or purposes, may only be called by the Managing Member. The Managing Member shall designate the place, either within or outside the State of Delaware, of any meeting of the Members. The Managing Member shall provide written notice stating the place, day, hour and purpose of any meeting to the Members entitled to vote at such meeting not less than five (5) nor more than thirty (30) days before the date of the meeting. The affirmative vote of Members holding more than 50% of the Company's Units (exclusive of any Defaulting Members) will be the act of the Members for purposes of any action required by the Delaware Act.

5.9 Class T Commission

(a) An aggregate sales commission equivalent to 8.75% of a Class T Member's Capital Commitment will be assessed against each Class T Member (the "Aggregate Commission"), payable in the form of an Upfront Commission plus a Trailing Commission, each as described below:

(i) "Upfront Commission" - Upon making the Capital Commitment, a commission of 3.50% will be assessed against such Capital Commitment. The Investment Manager and the Member will share the costs of such commission in an amount equivalent to 2.0% and 1.50%, respectively, of the Capital Commitment. The Member's portion of the Upfront Commission will be expensed to the Member's Capital Account.

(ii) "Trailing Commission" - On a monthly basis in arrears, an amount equivalent to 0.125% (1.5% per annum) of the net asset value of the Class T Member's Capital Account will be deducted until such time as the Aggregate Commission (inclusive of the Upfront Commission) has been paid.

(b) At such time as the Aggregate Commission is fully paid with respect to a Capital Commitment for Class T Units, such Class T Units will convert into Class I Units

ARTICLE 6 MANAGEMENT

6.1 Management by Managing Member

The management of the Company shall be vested exclusively in the Managing Member and any agents selected by it. Subject to the requirements of applicable law, the Managing Member may delegate or assign any of its duties or authority arising in connection with the management of the Company or its assets to any Person, including one or more administrators, investment managers or sub-investment managers. No Member, in its capacity as such, shall have any part in the management of the Company, and no Member shall have any authority or right to act on behalf of the Company in connection with any matter, and any such Member shall indemnify the Company for any costs or damages incurred by the Company as a result of the unauthorized action of such Member.

6.2 Authority of the Managing Member

The Managing Member shall have the power by itself on behalf and in the name of the Company to carry out, directly or indirectly, any and all of the objects and purposes of the Company set forth in Article 3 or hereafter determined by the Managing Member and to perform all acts and enter into and perform all contracts and other undertakings, including with its Affiliates, which it may deem necessary, advisable or incidental thereto, including, without limitation, the power to:

- (a) invest all or a portion of the Company's assets in Investments, whether directly or indirectly through the REIT Subsidiary, Parallel Entity and/or other special purpose vehicle(s);
- (b) originate, invest in, acquire or own real estate, real estate-related assets or other investments;
- (c) rent or lease any real estate investments;
- (d) invest in publicly traded, private or restricted common and preferred stock, other evidences of equity ownership, debt securities of any credit quality or seniority including, without limitation, defaulted debt securities, secured and unsecured debt securities, or any options or securities convertible into or exercisable for any of the foregoing, fixed-income securities (including obligations of the United States, any other government or international agency or instrumentalities and agencies of any of them); and to acquire, hold, sell, dispose of, or otherwise invest in other instruments and property for investment or speculation or risk management purposes;
- (e) open, maintain and close accounts with brokers, dealers, banks, and others and issue all instructions and authorizations to entities regarding the purchase and sale or entering into, as the case may be, of any investment, certificates of deposit, bankers acceptances, repurchase and reverse repurchase agreements, agreements for the borrowing and lending of any investment and other assets, instruments and investments for the purpose of seeking to achieve the Company's purposes as well as to facilitate distributions, repurchases, the payment of expenses of the Company and the business and affairs of the Company in general;
- (f) borrow money from banks, broker-dealers and other lenders and enter into appropriate credit agreements and arrange for credit facilities for the purpose of purchasing an investment for the Company, reducing the need for the Company to hold cash, to pay operating expenses or for temporary liquidity purposes or funding repurchases on a short-term basis, and secure the payment of any obligations of the Company by hypothecation or pledge of all or part of the assets of the Company;
- (g) in the name of the Company or other special purpose vehicle(s), subject to paragraph (f) above, execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness and secure the payment thereof by mortgage, pledge or assignment of or security interest in all or any part of property then owned or thereafter acquired by the Company, as well as the Company's right to call and receive

each Member's Capital Contributions, and refinance, recast, modify or extend any of the obligations of the Company and the instruments securing those obligations;

(h) open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;

(i) acquire, lease, sell, hold or dispose of any assets or investments in the name or for the account of the Company or enter into any contract or endorsement in the name or for the account of the Company with respect to any such assets or investments or in any other manner bind the Company to acquire, lease, sell, hold or dispose of any such assets or investments whatsoever on such terms as the Managing Member shall determine and to otherwise deal in any manner with the assets of the Company in accordance with the purposes of the Company;

(j) organize one or more Persons formed to hold an investment or serve as record title as nominee for the Company;

(k) enter into a contract with a Person or Persons selected by the Managing Member to act as investment manager or as sub-investment manager for the Company, including third parties and/or Affiliates of the Managing Member, to manage all or a portion of the Company's assets and direct the formulation and implementation of investment policies and strategies for the Company in accordance with this Agreement and the Memorandum;

(l) enter into contracts with a Person or Persons selected by the Managing Member to act as custodian, administrator and transfer agent for the Company in accordance with the Memorandum;

(m) engage attorneys, independent auditors or such other Persons as the Managing Member may deem necessary or advisable, and to do all such other acts as the Managing Member, or such personnel or employees acting within the scope of authority granted to them by the Managing Member or this Agreement, may deem necessary or advisable in connection with carrying out the business of the Company;

(n) make such elections for the Company under the Code and other relevant tax laws as to the treatment of, and accounting for, items of income, gain, loss, deduction and credit, and as to all other relevant matters, as the Managing Member deems necessary or appropriate, including, without limitation, elections referred to in Section 754 of the Code, determination of which items of cash outlay are to be capitalized or treated as current expenses, and selection of the method of accounting and bookkeeping procedures to be used by the Company;

(o) bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Company;

(p) deposit, redeem, invest, pay, retain and distribute the assets of the Company in a manner consistent with the provisions of this Agreement;

(q) cause the Company to carry such insurance as the Managing Member deems necessary or advisable;

(r) do any and all acts on behalf of the Company, and exercise all rights of the Company with respect to its interest in any property or any Person, including, without limitation, the voting of proxies with respect to any investment, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters;

(s) authorize any officer, director, employee or other representative of the Managing Member, as employee or agent of the Company, to act for and on behalf of the Company in any or all of the foregoing matters and all matters incidental thereto as fully as if such Person were the Managing Member;

(t) create any Class of Units as provided in Section 4.1(a)(i);

(u) offer Units and engage a member firm of FINRA, as selling agent for the offering of such Units, and to pay fees, expenses and other compensation to such Persons;

(v) accept subscriptions of investors and admit investors as Members;

(w) incur all expenditures permitted by this Agreement;

(x) cause the Company's Certificate to be filed of record in the State of Delaware and anywhere required and to execute and record any documents that the Managing Member deems necessary to enable the Company to do its business as herein contemplated;

(y) invest all or a portion of the Company's assets in private investment funds or similar investment vehicles;

(z) engage in any lawful transactions that the Managing Member from time to time determines;

(aa) take all actions that the Managing Member deems necessary or desirable to cause the Company to comply with all applicable provisions of law;

(bb) invest in the sole and absolute discretion of the Managing Member all or any portion of the investable assets of the Company through special purpose subsidiaries or other special purpose vehicles, including the REIT Subsidiary, and to purchase, create, finance, invest in, or organize (alone or in conjunction with others including Affiliates of the Managing Member) swaps or other derivatives or structured products to access or finance investments or source opportunities for the Company;

(cc) form any Parallel Entity;

(dd) carry out any other activity set forth in the Memorandum but not specified herein; and

(ee) act for the Company in all other matters.

The Managing Member may perform its obligations hereunder itself or through its Affiliates.

6.3 Reliance by Third Parties

Persons dealing with the Company are entitled to rely conclusively upon the certificate of the Managing Member to the effect that it is then acting as the Managing Member and upon the power and authority of the Managing Member and any employee or agent of the Managing Member or the Company as herein set forth.

6.4 Investment Manager Engagement and Fees

(a) The Company entered into an Amended and Restated Investment Management Agreement, dated as of the date of this Agreement, as amended, supplemented or otherwise modified from time to time (the “Investment Management Agreement”), with the Investment Manager pursuant to which the Investment Manager has agreed to provide investment management and investment advisory services to the Company.

(b) The Company shall pay the Investment Manager a management fee (the “Management Fee”) after the beginning of each calendar quarter, as set forth in an Investment Management Agreement. The Management Fee shall be payable in advance, prorated for any partial calendar quarter, and calculated at a rate set forth in the Memorandum. The Management Fee shall be equal to a percentage of the NAV per Unit for all of such Member’s Units of the applicable Class (after taking into account any Capital Contributions) as of the beginning of each calendar quarter, and, if other than the beginning of a calendar quarter, as of the date of a Member’s admission, repurchase of such Member’s Units or additional Capital Contribution. The Management Fee shall be debited directly from the applicable Member’s Capital Account(s) and the Members’ ownership of Units shall be adjusted as required by Section 8.1. The Managing Member with the consent of the Investment Manager may, in its sole and absolute discretion, reduce the Management Fee paid by the Company and charged against the Capital Accounts of certain Members to reflect the reduction or waiver of the Management Fee with respect to any such Member for whom the Managing Member, in its sole and absolute discretion, reduces or waives the Management Fee; provided, however, that any such waiver shall not result in an increase in the Management Fee assessed on any other Member’s Capital Account(s).

(c) The Investment Manager shall be entitled to a fee (an “Acquisition Fee”) equal to one half percent (0.5%) of the contract purchase price of any real estate acquisition made by the Company, which does not include, for avoidance of doubt, investments in publicly traded real estate-related securities; provided, that no Acquisition Fee will apply to Class E Units. With respect to investments made by the REIT Subsidiary, the Acquisition Fee may be charged at the REIT Subsidiary level (and in such case, shall not be paid or owing at the Company level). The Investment Manager may assign its right to receive all or a portion of the Acquisition Fee to an Affiliate of the Investment Manager or

any other third party in its sole discretion. Any Acquisition Fee payable to the Investment Manager or its assignee will not offset or reduce the Management Fee or other fees otherwise payable to the Investment Manager.

(d) The Management Fee otherwise payable to the Managing Member will be reduced by 100% of the Transaction Fees and 50% of the Origination Fees (but excluding, for the avoidance of doubt, Acquisition Fees) paid to the Managing Member or the Investment Manager, as determined and calculated at the time the Management Fee is due. Such offset shall be shared ratably among all Class I, Class INV and Class T Members in proportion to their aggregate NAV per Unit. Any such Transaction Fees or Origination Fees (to the extent of 50% thereof), to the extent not used in full to reduce any Management Fee payment, will be carried forward until all such Transaction Fees and Origination Fees are applied as a reduction of subsequent Management Fee payments. If, however, there is any balance of Transaction Fees or Origination Fees (to the extent of 50% thereof) that have not reduced Management Fees before the dissolution of the Company, that balance will be paid over to the Company by the Managing Member and/or Investment Manager and allocated among all Members in proportion to their aggregate NAV per Unit (unless a Member provides written notice to the Managing Member that it elects not to receive an allocation or distribution of any such excess fees, in which case any amount subject to any such election will also be allocated among all other Members in proportion to their respective aggregate NAV per Unit), as equitably adjusted by the Managing Member to reflect any waiver or reduction in Management Fees under Section 6.4(a). For purposes of this Section 6.4(d), any non-cash Transaction Fees and Origination Fees will have a value and a deemed date of receipt that is reasonably determined by the Managing Member.

6.5 Expenses

(a) The Managing Member shall pay all ordinary and recurring expenses of providing its services to the Company, including, without limitation, compensation of the Managing Member's officers and employees, general overhead, office rent and salary expenses; provided, however, that a portion of the salary paid to employees or contractors of the Managing Member may be allocated to the Company where such persons are providing administrative services that would otherwise be outsourced to the Company's third-party administrator.

(b) The Company will reimburse the Investment Manager and its affiliates, as applicable, an amount not to exceed \$500,000 for all formation and offering expenses incurred on behalf of the Company and its subsidiaries (including the REIT Subsidiary), including without limitation, travel, legal, accounting, filings, the cost of preparing the offering materials and other documentation in connection with the formation of the Company, and all other expenses incurred by the Company or any related party in connection with the offer and sale of Units. The Investment Manager shall be responsible for all formation and offering expenses in excess of \$500,000.

(c) Except as otherwise provided in this Agreement, the Company shall bear all of its, the REIT Subsidiary's, Parallel Entities' and/or other special purpose vehicles' ongoing operating expenses, including, but not limited to: principal and interest on

borrowed money; taxes on investments; brokerage fees; legal fees, including the time (billed at standard hourly rates) and expenses of any internal legal counsel employed by an Affiliate of the Managing Member; insurance expenses of the Company; audit and accounting fees; the Management Fee; the Administrative Fee; Performance Allocation; Acquisition Fees; third party consulting fees relating to Investments or proposed Investments; expenses (whether direct or indirect) incurred in connection with investigating, evaluating, conducting due diligence, travel expenses, structuring, asset managing and negotiating with respect to Investments and proposed Investments, whether or not consummated (including salaries and wages, benefits and overhead of all employees directly involved in the performance of acquisition services); taxes applicable to the Company on account of its operations; fees incurred in connection with the maintenance of bank or custodian accounts; expenses and costs related to the preparation and delivery of any reports, certificates or opinions required under this Agreement; expenses related to the Company's exercise of its remedies pursuing defaulting Members; expenses incurred in connection with the repurchase of Units and/or a Tender Offer; and all expenses incurred in connection with the Company's compliance with applicable securities laws or regulations. The Company shall bear expenses incurred by the Managing Member in serving as Partnership Representative, the cost of liability and other insurance premiums, all out-of-pocket costs associated with Company meetings, all legal and accounting fees relating to the Company and its activities, all expenses associated with deal sourcing tools, including, without limitation, loan and property databases with comparative analysis and third-party data, valuation tools, lead generation and management resources, and property pro forma building tools, all costs and expenses arising out of the Company's indemnification obligations and all other normal operating expenses except those to be borne by the Managing Member or the Investment Manager pursuant to this Agreement.

(d) Appropriate reserves may be created, accrued and charged for contingent expenses and liabilities, if any, as of the date any such contingent expense or liability becomes known to the Managing Member. Such reserves shall reduce the Company's ending net asset value for all purposes, including Tender Offers. Subject to the provisions of this Section 6.5, the Managing Member is hereby authorized to pay compensation from the Company for accounting, administrative, legal, expert, custodial, computer support, technical and investment management services rendered to the Company and, through independent contractors hired as necessary from time to time, may provide all personnel to perform the services required by the Company.

(e) Upon written substantiation and verification, the Managing Member and the Investment Manager shall be entitled to receive out of Company funds available for reimbursement, all amounts expended by it in payment out of its own funds of properly incurred Company obligations.

6.6 Activities of Managing Member; Conflicts of Interest

(a) The Managing Member and its members, managers, officers, directors, employees or other agents and agents of any of them and employees of the Company, if any, shall devote so much of their time to the affairs of the Company as in their judgment the conduct of such business shall reasonably require. The Managing Member and its

members, managers, officers, directors, employees or agents and agents of any of them and employees of the Company, if any, shall not be obligated to do or perform any act or thing in connection with the business of the Company not expressly set forth herein. Notwithstanding anything to the contrary in this Agreement, the members, partners, managers, officers, directors, employees or other agents of the Managing Member and the Investment Manager and any of their respective Affiliates and any employees of the Company, if any, shall be permitted to perform similar duties for any entity.

(b) The Managing Member, Investment Manager, their respective Affiliates and their personnel may also advise other entities that may invest in similar or different investments than the Company. Some of these entities may implement an investment program substantially similar to that of the Company. In managing multiple clients, the Managing Member, Investment Manager and their respective Affiliates may determine that an investment opportunity is appropriate for a particular client, or for itself, but not for another client. To the extent that certain clients invest in a limited investment opportunity, or where an underlying investment is closing to new or additional investments, the ability of other clients to invest in that same investment opportunity may be adversely affected. In allocating such limited investment opportunities, not all clients may end up participating in an opportunity. Where clients have competing interests in a limited investment opportunity, the Managing Member, Investment Manager and their respective Affiliates do not typically allocate investment opportunities pro rata among clients but rather allocate such opportunities on the basis of numerous considerations, including, without limitation, the size of the investment and a client's ability to make the investment in light of its unfunded commitments, the opportunity and capacity for follow-on or additional investments, investment restrictions, portfolio concentration and the diversification of the client's existing investments, participation in other opportunities, the anticipated holding period for the investment, the investment's stage of development, economic factors concerning the investment, compliance with applicable laws and tax concerns as well as the relative size of different clients' same or comparable holdings. In addition, the Managing Member, Investment Manager and their respective Affiliates may have incentive to favor one client over another when making investment decisions where a client is beneficially owned by or under the control of the employees or affiliates of the Managing Member or Investment Manager, such as by virtue of the fact that employees or affiliates own a controlling percentage of the client's voting rights.

(c) Nothing herein contained shall be deemed to preclude the Managing Member, the Investment Manager or their respective members, managers, officers, directors, employees or other agents or agents of any of them or employees of the Company, if any, from engaging directly or indirectly in any other business or from directly or indirectly purchasing, selling or holding Investments, securities, options, separate accounts, investment contracts, currency, currency units or any other asset and any interests therein for their own accounts or for the account of any other Person, whether as investment manager, dealer, broker or otherwise. No Member shall, by reason of being a Member of the Company, have any right to participate in any manner in any profits or income earned or derived by or accruing to the Managing Member, the Investment Manager or their respective members, managers, officers, directors, employees or other agents, from the conduct of any business other than the business of the Company or from the conduct of

any activities for any account other than that of the Company. It is the express understanding of the Members that the doctrine of “corporate opportunity” shall not apply to the Company and each Member hereby waives, relinquishes and renounces any such right or claim, whether now in existence or arising in the future.

(d) The Managing Member and the Investment Manager shall have the right to cause the Company or entities that the Company controls or invests in to do business with any other investment partnership or limited liability company of which the Managing Member, the Investment Manager or their respective Affiliates are the general partner or manager of or entities that such other partnership or limited liability company controls or invests in, in each case on terms that are arm’s length and fair to the parties, consistent with the fiduciary standards applicable to the Managing Member and the Investment Manager.

6.7 Related Party Transactions

Each Member hereby authorizes the Managing Member, on behalf of such Member, to select one or more Persons, who shall not be an Affiliate of the Managing Member, to serve on a committee, the purpose of which is to review and, on behalf of the Company, approve or disapprove, to the extent required by applicable law or deemed advisable by the Managing Member, transactions that may be viewed as conflicts of interest or related party transactions, including without limitation principal transactions (as such term is used under the Advisers Act) between the Company, on one hand, and the Managing Member or its Affiliates, on the other hand. Each Member acknowledges that such committee may approve of such transactions prior to or contemporaneous with, or ratify such transactions subsequent to, the consummation of such transactions. In no event shall any such transaction be entered into unless it complies with applicable law. The Person(s) so selected may be indemnified by the Company for any loss, cost or expense arising out of their services to such committee to the fullest extent permitted by law; provided, that such loss, cost or expense did not involve bad faith on the part of the Member(s). Any decision of such committee shall be binding on all Members. By entering into the Subscription Agreement, each Member acknowledges and agrees to (i) the delegation of the authority to approve conflicts of interests and/or related party transactions, including without limitation principal transactions, to such committee; (ii) the appointment of the Member(s) of such committee by the Managing Member; and (iii) the Company entering into transactions involving conflicts of interests and related party transactions to the fullest extent permitted under applicable law.

ARTICLE 7

STANDARD OF CARE; INDEMNIFICATION; EXCULPATION

7.1 Standard of Care

Neither the Managing Member, the Investment Manager, any person or persons designated pursuant to Section 10.2, nor any of their respective Affiliates, nor any of their respective partners, officers, directors, members, employees, shareholders, managers or agents (the “Indemnified Persons”) shall be liable to the Company or to any Member by reason of any acts or omissions of such person in the conduct of the Company’s business based upon errors of judgment, negligence or other fault in connection with the Company’s business or affairs (including any such act or

omission by the Managing Member in its capacity as Partnership Representative), except for fraud, gross negligence or willful misconduct. In addition, neither the Managing Member nor its Affiliates will be liable to the Company for any losses due to the mistakes, negligence, misconduct or bad faith of any broker or other agent or third-party service provider of the Company selected by such Person with reasonable care. The Managing Member and its Affiliates may consult with counsel, accountants and other professional advisers in respect of the affairs of the Company and shall be fully protected and justified in any action or inaction that is taken in good faith in reliance on and in accordance with the advice or opinion of such advisers, so long as such advisers were selected with reasonable care.

7.2 Indemnification

(a) The Company shall, to the fullest extent to which it is empowered to do so by the Delaware Act or any other applicable law, indemnify, hold harmless and make advances for expenses to any Person, including the Indemnified Persons, who was or is a party, or is threatened to be made a party, to any Proceeding by reason of its activities undertaken at the Managing Member's or the Investment Manager's request on the Company's behalf or in furtherance of the Company's interest or otherwise arising out of or in connection with the Company, the Managing Member, the Investment Manager or the Company's investments, against losses, damages, expenses (including attorneys' fees), judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and amounts reasonably incurred by it in connection with such Proceeding; provided, however, that this indemnification shall apply only so long as the conduct of such Person did not constitute fraud, gross negligence or willful misconduct.

(b) The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that a Person acted with gross negligence, fraud or willful misconduct. For purposes of this Section 7.2, acts or failures to act undertaken upon the advice of counsel shall be deemed to be actions in good faith, within the scope of authority and in the Company's best interests.

(c) The right to indemnification conferred by Section 7.2(a) shall include the right to be paid or advanced by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to a Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of its good faith belief that such Person has met the standard of conduct necessary for indemnification under this Section 7.2 and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such party is not entitled to be indemnified under this Section 7.2 or otherwise.

(d) Indemnification under this Section 7.2 shall continue as to any Person who has ceased to serve in the capacity that initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Section 7.2 shall be deemed contract rights, and no amendment, modification or repeal of this Section 7.2 shall have the effect of

limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

(e) The right to indemnification and the advancement and payment of expenses conferred by this Section 7.2 shall not be exclusive of any other right that a Person may have or hereafter acquire under law (common or statutory), this Agreement, the Investment Management Agreement, any other agreements, decisions of the Managing Member or otherwise.

(f) If Section 7.2 or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless a Person as to costs, charges and expenses (including, without limitation, reasonable attorneys' fees), judgments, fines and amounts paid in settlement with respect to any Proceeding to the full extent permitted by any applicable provision of this Article 7 that shall not have been invalidated and to the fullest extent permitted by applicable law.

(g) Notwithstanding anything herein to the contrary, the Managing Member is authorized to take any action that it reasonably determines to be necessary or appropriate to cause the Company to comply with any foreign or U.S. federal, state or local withholding requirements with respect to any allocation or distribution by the Company to any Member or Person. All amounts so withheld shall be treated as distributions to the applicable Member. In any case where a tax, fee or other assessment is levied upon the Company, the amount of which is determined in whole or in part by the status, actions or identity of one or more Members, the Managing Member may allocate the expense and withhold from the distributions to such Members such taxes, fees and assessments. Each Member hereby indemnifies and agrees to hold harmless the Company, the Managing Member and each other Member in accordance with Section 7.2(a) with respect to any taxes, including any penalties, assessed by any taxing authority with respect to an allocation, distribution or otherwise with respect to such Member.

7.3 Exculpation

(a) To the fullest extent permitted by the Delaware Act or other applicable law, the Indemnified Persons shall not have any personal liability to the Company or any other Member for monetary damages for breach of any fiduciary or other duty owed to any Person; provided, however, that this exculpation shall apply only so long as the conduct of the Managing Member did not constitute fraud, gross negligence or willful misconduct.

(b) The Indemnified Persons will not be liable for any tax imposed on the Company or the Members in any jurisdiction, for any costs incurred in respect of any tax audit or similar procedure, or for any tax position taken by such Person which was not clearly contrary to law when taken.

(c) The Indemnified Persons will not be liable to the Company, any Member, or any former Member if a price reasonably believed by the Managing Member, the Investment Manager or their Affiliates to be an accurate valuation of a particular direct or indirect investment of the Company is subsequently found to be inaccurate.

7.4 Interpretation

Notwithstanding any of the foregoing to the contrary, the provisions of this Article 7 shall not be construed so as to relieve (or attempt to relieve) any Person of any liability, to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law, but shall be construed so as to effectuate the provisions of this Article 7 to the fullest extent permitted by law.

ARTICLE 8 CAPITAL ACCOUNTS; PERFORMANCE ALLOCATION

8.1 Capital Accounts; Performance Allocation

(a) Capital Accounts. A Capital Account shall be maintained for each Member. As of any date, the Capital Account of a Member shall be equal to the sum of the following amounts: for each Class of Units held by such Member, the NAV per Unit as of such date, multiplied by the number of Units in such Class then held by such Member. The Capital Accounts shall be so adjusted on the date of any Capital Contribution and on the last day of each Accounting Period, subject to the other provisions of this Section 8.1(a). As of the close of each Performance Allocation Date, the Capital Account of each Member shall be tentatively determined without regard to the Performance Allocations (if any) to be made as of such date, the Performance Allocations (if any) shall be assessed as provided in Section 8.1(b), and the final Capital Accounts as of such date shall be determined. Any amounts charged or debited against a Member's Capital Account under this Article 8 or Article 9, other than among all Members in accordance with the number of Units held by each such Member, shall be treated as a partial redemption of such Member's Units for no additional consideration as of the date on which the Managing Member determines such charge or debit is required to be made, and such Member's Units shall be reduced thereby as appropriately determined by the Managing Member; provided, that the Performance Allocation shall be reflected as a reduction in the NAV per Unit of the Units against which such Performance Allocation is assessed (rather than as an adjustment to Unit ownership of the Members holding such Units) and the Managing Member shall be issued additional Units at such adjusted NAV per Unit to reflect the Performance Allocation credited to the Managing Member's Capital Account. Any amounts credited to a Member's Capital Account under this Article 8 or Article 9 (including amounts credited to the Managing Member's Capital Account in respect of the Performance Allocation, as provided in the preceding sentence), other than among all Members in accordance with the number of Units held by each such Member, shall be treated as an issuance of additional Units to such Member for no additional consideration as of the date on which the Managing Member determines such credit is required to be made, and such Member's Units shall be increased thereby as appropriately determined by the Managing Member. Notwithstanding the prior two sentences, the Managing Member may elect to adjust the Class NAV of a particular Class to reflect adjustments that affect such Class and that would otherwise require a repurchase or issuance of Units. No loan made by a Member to the Company shall constitute a Capital Contribution for any purpose. No interest shall be paid on any Capital Contribution to the Company.

(b) Performance Allocation. If as of the close of a Performance Allocation Date, a Class has a Net NAV Increase, and such Net NAV Increase exceeds the Hurdle Amount, then such Class shall be subject to a Performance Allocation as determined below. The Performance Allocation shall be (i) debited from the Capital Accounts of the Members of the applicable Class, pro rata in accordance with their ownership of Units in such Class and (ii) credited to the Capital Account of the Managing Member.

(i) With respect to each Class, the Performance Allocation shall equal the lesser of (A) 10% of the amount by which the Net NAV Increase exceeds the Hurdle Amount, plus 10% of the Hurdle Amount, or (B) 50% of the amount of the Net NAV Increase. If a Performance Allocation cannot be fully made due to the limitation in clause (B), the shortfall may be assessed as additional Performance Allocation against such Class in future Performance Allocation Periods (subject to clause (B)) in when a Performance Allocation against such Class is being made.

(ii) For purposes of the above, the following definitions apply:

(A) “High Water Mark” means, with respect to a Class, the Class NAV, as determined immediately after the most recent Performance Allocation against such Class, or if no Performance Allocation has been so assessed, the Class NAV as of the date of this Agreement; provided, that the High Water Mark shall be proportionally reduced in the event any Units of such Class that were outstanding as of the end of the prior Performance Allocation Period are redeemed prior to the close of the current Performance Allocation Period. The Managing Member is authorized to make appropriate adjustments to the High Water Mark of any Class in a manner determined fair and equitable to effectuate the intent of this Section 8.1(b).

(B) “Hurdle Amount” means a per-Class amount computed in the same manner as interest at a rate of 6% per annum (pro-rated for any period less than a full calendar year) on the Net Asset Value of all Units of such Class outstanding at the beginning of the then-current Performance Allocation Period and all Units of such Class issued since the beginning of the then-current Performance Allocation Period, taking into account the timing and amount of all issuances of Units of such Class during the period; provided that the calculation of the Hurdle Amount for any period will exclude any Units repurchased during such period, which Units will be subject to the Performance Allocation upon such repurchase as described in Section 8.1(b)(iii). The Hurdle Amount is non-cumulative and resets to zero at the end of each year.

(C) “Net NAV Increase” means the excess, if any of (1) the sum of the Total Return for such Performance Allocation Period plus the Net Asset Value, as of the beginning of the Performance Allocation Period, of all Units of such Class outstanding as of the end of such Performance Allocation Period (or, with respect to Units of such Class outstanding at the end of the Performance Allocation but issued after the beginning of the Performance allocation period, the

proceeds received by the Company from such issuance) minus (2) the High Water Mark.

(D) “Performance Allocation Date” means (i) the end of each calendar year and (ii) the date of dissolution of the Company. The Managing Member may waive or establish additional Performance Allocation Dates as necessary in the discretion of the Managing Member to effectuate the intent of this Agreement.

(E) “Performance Allocation Period” means a period beginning on the first day following a Performance Allocation Date and ending on the subsequent Performance Allocation Date.

(F) “Total Return” means, for each Performance Allocation Period (1) all distributions accrued or paid (without duplication) during such Performance Allocation Period on Units of such Class outstanding as of the end of such Performance Allocation Period, *plus* (2) the change in the Net Asset Value of such Units of such Class since the beginning of such Performance Allocation Period, before giving effect to (x) changes resulting solely from the proceeds of the issuance of Units during such Performance Allocation Period and (y) any allocation or accrual of the Performance Allocation. For the avoidance of doubt, Total Return will (i) include appreciation and depreciation in the Net Asset Value of Units issued during the then-current Performance Allocation Period but (ii) exclude the proceeds from the initial issuance of such Units.

(iii) With respect to Units that are repurchased or redeemed other than as of the close of a Performance Allocation Period, the Managing Member shall be entitled to such Performance Allocation in an amount calculated as described above calculated solely with respect to such redeemed or repurchased Units, and for the portion of the year for which such Units were outstanding.

(iv) The Managing Member may cause the Company to issue other Classes or Units having subject to differing Performance Allocations (or to no Performance Allocation). The Managing Member reserves the right, in its sole discretion, to waive or rebate all or a portion of the Performance Allocation with respect to a particular Member without notification or consent of the other Members. The Managing Member shall not be entitled to a Performance Allocation to the extent that, in the Managing Member’s judgment, the making of such Performance Allocation would cause the requirements of Section 11.1(c) to be violated; provided, that any Performance Allocation not made as a result of such restriction shall be made to the Managing Member on a priority basis at such time as the making of such Performance Allocation would not cause the requirements of Section 11.1(c) to be violated. Units held by the Managing Member shall not be subject to a Performance Allocation. At any time after any Performance Allocation Date in which the Managing Member is issued additional Units in connection with a Performance Allocation, and subject to Section 11.1(c), the Managing Member

may cause the Company to repurchase all or a portion of such Units granted to the Managing Member in connection with such Performance Allocation.

(v) The Managing Member may assign its right to receive all or a portion of the Performance Allocation to an Affiliate of the Managing Member or any other third party in its sole discretion.

8.2 Compliance with Treasury Regulations

The provisions of this Article 8 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with section 1.704-1(b) and other applicable sections of the Treasury Regulations, and shall be interpreted and applied in a manner consistent with them. If the Managing Member determines that it is prudent to modify the manner in which the Capital Accounts are computed in order to comply with the Treasury Regulations, the Managing Member may make such modifications, provided they do not have a material adverse effect on the amounts distributable to any Member.

ARTICLE 9 ALLOCATIONS, DISTRIBUTIONS AND TAXES

9.1 Allocation of Certain Withholding Taxes and Other Expenditures

(a) If the Company incurs a withholding tax or other tax obligation with respect to the share of Company income allocable to any Member, then the Managing Member, without limitation of any other rights of the Company or the Managing Member, will cause the amount of the obligation to be debited against the Capital Account of the Member when the Company pays the obligation, and the Member's ownership of Units shall be reduced as provided in Section 8.1. If the amount of the taxes exceeds the value of all such Member's Units, then the Member and any successor to the Member's Units will pay to the Company as a Capital Contribution, upon demand by the Managing Member, the amount of the excess. The Managing Member will not be obligated to apply for or obtain a reduction of, or exemption from, withholding tax on behalf of any Member that may be eligible for the reduction or exemption, except that, in the event that the Managing Member determines that a Member is eligible for a refund of any withholding tax, the Managing Member may, at the request and expense of the Member, assist the Member in applying for such refund.

(b) Except as otherwise provided for in this Agreement, any expenditures payable by the Company (including the Management Fee, Administrative Fee and Acquisition Fees), to the extent determined by the Managing Member to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Members, will be charged to only those Members on whose behalf the payments are made or whose particular circumstances gave rise to such payments. The charges will be debited from the Capital Accounts of the Members as of the close of the Accounting Period (or at such other time(s) determined by the Managing Member) during which the items were paid or accrued by the Company and the Unit ownership of such Members (or the applicable Class NAV) will be adjusted as provided in Section 8.1.

9.2 Income Tax Allocations

(a) Except as provided in Section 9.2(b), for each Fiscal Year (or other period for which allocations are required under the Code or the Treasury Regulations), items of Company income, deduction, gain, loss or credit that are recognized for tax purposes shall be allocated in such manner as to equitably reflect amounts credited or debited to each Member's Capital Account for the current and prior Accounting Periods (or relevant portions thereof). Such allocations (including allocations with respect to contributed and revalued property) shall take into account the principles of section 704(b) and section 704(c) of the Code and the Treasury Regulations thereunder, including Treasury Regulation sections 1.704-1(b)(2)(iv)(f)(1) through (5), section 1.704-1(b)(4)(i), and section 1.704-3, or any successor provisions. At the Managing Member's sole and absolute discretion, the Company may aggregate realized gains and losses for this purpose in any manner permitted by Treasury Regulation section 1.704-3 or IRS guidance.

(b) Notwithstanding Section 9.2(a), in the event that all or a portion of a Member's Units are repurchased, the Managing Member may, in its sole and absolute discretion, specially allocate items of Company income and gain to that Member for tax purposes to reduce the amount, if any, by which the amount of the repurchase exceeds such Member's "adjusted tax basis," for federal income tax purposes, in the allocable portion of such Member's Units in the Company as of such time (as determined by the Managing Member, which determination may be made without regard to any adjustments made to such "adjusted tax basis" by reason of any transfer or assignment of such Units, including by reason of death, termination or dissolution (except to the extent any such adjustment resulted in a corresponding adjustment under section 743 of the Code), and by disregarding such Member's share of liabilities under section 752 of the Code). Company net realized losses may be specially allocated by the Managing Member in a similar manner. The items of Company income, gain, loss and deduction that may be allocated under this Section 9.2(b) shall be limited to capital gains and losses, and/or other items of income, gain, loss and deduction; in each case, the allocation of which is permitted to cure "book-tax" differences under the principles of Treasury Regulation section 1.704-3.

9.3 Distributions

(a) The Managing Member may, in its sole discretion, cause the Company to make such distributions at such times and in such amounts as the Managing Member will determine in its sole discretion. The Company is not required to make distributions to the Members. However, the Managing Member intends to distribute the Company's income on a monthly or other periodic basis, after payment of Company expenses as determined by the Managing Member, in such amounts as determined by the Managing Member in its sole discretion.

(b) Distributions, in the discretion of the Managing Member and upon election by a Member, other than pursuant to Section 9.3(a) or Article 10, may be made in the form of additional Units (of such Class as determined by the Managing Member). Such Units will be issued at the prevailing NAV per Unit of the relevant Class, as of the close of the day such distribution was effective, and will adjust each Member's Capital Account in

accordance with Section 8.1. Notwithstanding the foregoing, each Member will initially receive distributions under this sub-section in the form of cash, unless the Managing Member decides to offer, and such Member elects to receive, additional Units in lieu of cash distributions. Members may alter their election pursuant to this sub-section upon ninety (90) days' prior written notice to the Managing Member. Units issued in accordance with this sub-section shall not be subject to the Lock-Up Period.

(c) Notwithstanding sub-sections (a) and (b) above, no distributions (whether in the form of cash or Units) shall be made: (i) if such distribution would violate any contract or agreement to which the Company is then a party or any law, rule, regulation, order or directive of any governmental authority then applicable to the Company; (ii) to the extent that the Managing Member, in its sole and absolute discretion, determines that any amount otherwise distributable should be retained by the Company to pay, or to establish a reserve for the payment of, any liability or obligation of the Company, whether liquidated, fixed, contingent or otherwise; (iii) if such distribution shall interfere with an attempt to hedge an existing investment or an obligation to make a follow-on investment; or (iv) to the extent that the Managing Member, in its sole and absolute discretion, determines that the cash available to the Company is insufficient to permit such distribution.

9.4 Allocation Among Members Subsequent to Assignment

Each item of income, gain, loss, deduction and credit of the Company attributable to a transferred Unit shall, for federal income tax purposes, be determined on an annual basis (or other periodic basis, as required or permitted by Section 706 of the Code) and shall be allocated to the Members of the Company who own Units as of the close of business on the day preceding the first day of the quarter in which the transfer is recognized by the Company; provided, however, that gain or loss on a sale or other disposition of all or a substantial portion of the assets of the Company, shall be allocated to the owner of record of the Units on the date of sale. The Managing Member may revise, alter or otherwise modify such methods of determination and allocation as it determines necessary, to the extent permitted by Section 706 of the Code and regulations or rulings promulgated thereunder.

9.5 Restricted Members

In the event that the Managing Member determines that, based upon tax or regulatory reasons, a Member should not participate in the net capital appreciation or net capital depreciation, if any, attributable to trading in any security, or type of security or to any other transaction, or any portion of any of the foregoing, the Managing Member shall allocate such net capital appreciation and net capital depreciation to the Capital Accounts of the Members of the Company (each an "Unrestricted Member"), to whom such reasons do not apply. In addition, if for any of the reasons described above, the Managing Member determines in its sole discretion that a Member should have no interest, or a restricted interest, in a particular security, type of security or transaction, or any portion thereof, the Managing Member may set forth the interests in any such security or transaction in a separate memorandum account and the net capital appreciation and net capital depreciation for each such memorandum account shall be separately calculated. The Managing Member may, in its discretion, allocate interests specially allocated to Unrestricted Members as

set forth above, to the accounts of the other Members by “journal entry” to the extent permitted by applicable law. The Managing Member shall be authorized to create additional Classes of Units, to subdivide Units into one or more Classes, to combine Classes of Units and to amend this Agreement; in each case, as the Managing Member deems advisable to effectuate the foregoing.

9.6 Determination by Managing Member of Certain Matters

All matters concerning computation of Capital Accounts, the allocation of items of Company income, gain, loss, deduction and expense for tax purposes, the making of any elections and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Managing Member in its sole and absolute discretion. Such determination shall be final and conclusive as to all Members. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Managing Member shall determine, in its sole and absolute discretion, that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Members as reflected in this Agreement, the Managing Member may make such modification.

9.7 No Deficit Make-up

Notwithstanding anything herein to the contrary, but subject to Section 9.1 and Section 9.8, upon a liquidation of the Company, no Member shall be required to make any Capital Contribution to the Company in respect of any deficit in such Member’s Capital Account.

9.8 Federal and State Income Taxes

(a) The Managing Member, at the expense of the Company, shall arrange for the preparation and timely filing of all returns of the Company showing all income, gains, deductions, and losses necessary for federal and state income tax purposes, and shall furnish to the Members the tax information reasonably required for federal and state income tax reporting purposes. The Company will provide the Members with tax information on Schedule K-1 annually for their use in filing individual tax returns. No Member shall take a position on its tax return that is inconsistent with such Schedule K-1 provided by the Company.

(b) The Managing Member in its sole discretion shall have the authority to cause the Company to make or revoke any elections permitted under the Code, the Treasury Regulations, or any state or local tax law, including without limitation the election referred to in Section 754 of the Code; provided that the Managing Member shall not cause the Company to elect to be classified as a corporation.

(c) The Managing Member shall be the Company’s “partnership representative” (as defined in Code Section 6223(a)) (the “Partnership Representative”), and each member shall take such actions requested by the Managing Member to make such designation. In connection therewith, so long as the Partnership Representative is an entity, an individual will be appointed by the Company as the designated individual in accordance with the Treasury Regulations promulgated pursuant to Section 6223 of the Code through whom the Partnership Representative shall act for all purposes under subchapter C of

chapter 63 of the Code. Each current and former Member will furnish such information as may be requested by the Managing Member in connection with the Partnership Audit Provisions. For the avoidance of doubt, the Partnership Representative may cause the Company to make any election permitted by the Partnership Audit Provisions, including the election described in Code Section 6226. The Managing Member is further authorized and required to represent the Company (at the expense of the Company) in connection with all examinations of its affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend assets of the Company for professional services and costs associated therewith. Each Member agrees to cooperate with the Managing Member and to do or refrain from doing any or all things reasonably required by the Managing Member to conduct such proceedings.

(d) Notwithstanding anything to the contrary in this Agreement, unless otherwise agreed in writing by the Managing Member, each current and former Member shall indemnify and hold harmless the Company, the Managing Member and each other Indemnified Person (collectively, the “Tax Indemnitee”) to the fullest extent permitted by law, from and against any adjustment to items of income, gain, loss, deduction, or credit of the Company, or any Member’s distributive share thereof, for any Company taxable year, and any liability imposed on the Company under the Partnership Audit Provisions or otherwise under the Code, in each case required to be paid by the Company, including but not limited to any tax, interest, penalty, addition to tax, or additional amount which relates to an adjustment to any such item or share, along with any damages, costs, losses, fees and expenses (including reasonable attorneys’ fees and expenses) of any kind or nature whatsoever which may be sustained or suffered by a Tax Indemnitee relating to the foregoing. Each current and former Member’s share of such indemnity shall be based on its share (as determined by the Managing Member in its sole and absolute discretion) of the related adjustment, payment, or liability; provided, that if the Managing Member determines that any amended return filed or information provided by a Member under Code Section 6225 (as added by the Partnership Audit Provisions) reduces the Company’s “imputed underpayment” (as defined in the Partnership Audit Provisions) with respect to such Member, then if the Managing Member determines it is reasonably practicable to do so such Member’s obligation under this Section 9.8(d) shall be equitably reduced to take into account such reduction (taking into account any offsetting increases to taxable income or reduction in tax attributes), as determined by the Managing Member in its sole and absolute discretion. Any amounts contributed by a Member pursuant to Section 9.8(d) shall be credited to such Member’s Capital Account (and the Capital Accounts of the Members shall be otherwise adjusted, including to reflect any associated tax liability of the Company, in the manner deemed advisable by the Managing Member) but shall not constitute a Capital Contribution hereunder or, unless the Managing Member deems it to be equitable, entitle such Member to additional Units. The Managing Member in its sole discretion may debit all or any portion of any amount owing by a Member under this Section 9.8(d) from such Member’s Capital Account.

(e) Not in limitation of Section 9.8(d), all expenses incurred in connection with a tax audit, investigation, settlement or review of the Company, and any other expenses incurred by the Partnership Representative in connection with its duties as Partnership Representative shall be borne by the Company.

(f) The provisions of this Section 9.8 shall survive the termination, dissolution, liquidation and winding up of the Company and the termination of any Member's Units or other interest in the Company (whether by resignation, withdrawal, Transfer or otherwise).

9.9 Accounting Principles

The Company's financial statements will be prepared in accordance with generally accepted accounting principles using the method of accounting determined by the Managing Member.

ARTICLE 10 DISSOLUTION AND TERMINATION

10.1 Dissolution

(a) Notwithstanding anything in this Agreement to the contrary, the Company may be dissolved only upon the occurrence of any of the following events:

(i) the Managing Member's Bankruptcy, dissolution, withdrawal from the Company or resignation as sole Managing Member without appointing another Person to act as Managing Member prior to its resignation pursuant to Article 13;

(ii) the sole Managing Member resigns and its designated successor fails to receive the approval of Members as specified in Section 13.1(d), upon the effective date of such resignation;

(iii) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware Act;

(iv) any event that would make the Company's continued existence unlawful;

(v) due to legal, tax, regulatory, economic or other changes it is impracticable for the Company to continue to make investments; or

(vi) the determination by the Managing Member upon giving at least ninety (90) days' advance written notice to Members.

(b) The Company's dissolution will be effective on the day on which an event described in Section 10.1(a) occurs, but the Company will not terminate until a certificate of cancellation is filed with the Secretary of State of the State of Delaware and the Company's assets are distributed as provided in Section 10.3. Notwithstanding the Company's dissolution, prior to the Company's termination, the business of the Company will continue to be governed by this Agreement.

10.2 Liquidator

Upon dissolution, the Company will be liquidated in an orderly manner. The Managing Member or, if there is no Managing Member, a person or persons designated by a vote of the holders of more than 50% of the issued and outstanding Units of the Company (exclusive of any Defaulting Members), will be the liquidator (the “Liquidator”) to wind up the affairs of the Company pursuant to this Agreement. The Liquidator may direct the custodian to reserve, in connection with any transfer or distribution of assets, an amount adequate to assure payment of the Management Fee and to provide for any other liabilities of the Company properly incurred, to be incurred or reasonably anticipated, and finally to dispose of such amount to the same parties and in the same proportions as the balance of the assets were disposed of.

10.3 Winding Up, Liquidation and Distribution of Assets

(a) Upon dissolution, an accounting will be made of the Company’s assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managing Member will:

(i) sell or otherwise liquidate all of the Company’s assets as promptly as practicable;

(ii) allocate any profit or loss resulting from such sales to the Member’s Capital Account pursuant to Article 9;

(iii) discharge all liabilities of the Company, including liabilities to the Members as creditors of the Company to the extent permitted by law; and

(iv) distribute the remaining assets to Members in accordance with the positive balance (if any) in their Capital Account (as determined after taking into account all Capital Account adjustments for the Company’s taxable year during which the liquidation occurs). The Company may make any payment pursuant to this Section, including in connection with a liquidating distribution, in cash or in a form other than cash, in each case as determined by the Managing Member. For such purposes, the value of any non-cash assets distributed shall be as determined in good faith by the Managing Member.

(b) Subject to Section 9.1 and Section 9.8, if any Member has a deficit balance in such Member’s Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member will have no obligation to make any Capital Contribution, and the deficit balance will not be considered a debt owed by the Member to the Company or to any other person for any purpose whatsoever.

10.4 Distribution of Noncash Items

The Liquidator will use its best efforts to convert all assets of the Company to cash for distribution to the applicable Members; provided, however, that distributions may include a proportionate share of assets of the Company.

10.5 Certificate of Cancellation

When all debts, liabilities and obligations of the Company have been paid and discharged, or adequate provisions have been made for their payment or discharge, and all of the remaining property and assets of the Company have been distributed, a certificate of cancellation setting forth the information required by the Delaware Act will be executed by one or more authorized persons and filed with the Delaware Secretary of State. Upon such filing, the existence of the Company will cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Delaware Act.

ARTICLE 11 RESTRICTIONS ON TRANSFERS; NEW MEMBERS

11.1 Requirements for Transfer

(a) Members may not Transfer their Units except (i) by testamentary disposition or by the laws of intestacy upon the death of the Member, (ii) by operation of law, and (iii) in any case, with the prior written consent of the Managing Member.

(b) Notwithstanding the foregoing, a Transfer is not permitted and shall be null and void *ab initio* if such Transfer (i) may not be effected without registration of the Units proposed to be transferred under the Securities Act of 1933, as amended, or any applicable state or other securities laws, (ii) would cause the Company to become a “publicly traded partnership” as defined in Section 7704 of the Code, (iii) would require the Company to register as an investment company under the Investment Company Act of 1940, as amended, (iv) would cause Company assets being deemed “plan assets” of any ERISA Member, (v) would cause the REIT Subsidiary to fail to qualify as a domestically controlled REIT under the Code, (vi) would cause the REIT Subsidiary to become a “pension-held REIT” under the provisions of Section 856(h) of the Code, or (vii) would cause the requirements of Section 11.1(c) to be violated. The purported transferee under any Transfer described in the foregoing sentence shall have no rights with respect to the Company, or the Units. A Transfer which is permitted under this Section 11.1 shall entitle the transferee to receive, as an assignee, allocations of profit and loss of the Company and distributions with respect to the Units transferred, but the transferee shall not become a Member, and shall have no rights to participate in the management of the Company, or to vote or consent with respect to any matter, unless admitted as a substitute Member pursuant to Section 11.2.

(c) Notwithstanding anything to the contrary in this Agreement, on and after the January 1, 2019 until the Restriction Termination Date (i) (A) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Units in excess of the Ownership Limit and (B) no Excepted Holder shall Beneficially Own or Constructively Own Units in excess of the Excepted Holder Limit for such Excepted Holder and (ii) no Person shall Beneficially Own or Constructively Own Units to the extent that such Beneficial Ownership or Constructive Ownership of Units would result in the REIT Subsidiary otherwise failing to qualify as a REIT (including, but not limited to, (x) no Person shall Beneficially Own or Constructively Own Units that would result in the REIT

Subsidiary directly or indirectly owning (or Constructively Owning) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the REIT Subsidiary, directly or indirectly, from such tenant would cause the REIT Subsidiary to fail to satisfy any of the gross income requirements of Section 856(c) of the Code and (y) no Person shall Beneficially Own or Constructively Own Units to the extent that such Beneficial Ownership or Constructive Ownership of Units would result in the REIT Subsidiary being “closely held” within the meaning of Section 856(h) of the Code).

11.2 Admission of Substitute Member

A transferee of Units pursuant to Section 11.1 shall be admitted as a Member with respect to the Units transferred only upon the prior written consent of the Managing Member, which consent may be withheld for any reason in the Managing Member’s sole discretion. Any transferee admitted to the Company as a Member shall execute a counterpart signature page to this Agreement, and such other documentation as the Managing Member deems appropriate, and upon admission as a Member will succeed to all rights and be subject to all obligations of the transferring or assigning Member with respect to the Units transferred or assigned. The Managing Member may require any transferee to reimburse the Company for any expenses associated with its admission as a substitute Member.

11.3 Admission of New Members

From the date of the formation of the Company, any person with the consent of the Managing Member may be admitted as a Member by the Company’s issuing additional Units at a NAV per Unit as determined in accordance with Section 4.2(d). By executing this Agreement, each Member consents to the admission of any Person whose subscription to become a Member is accepted by the Managing Member. Admission of a new Member to the Company shall not be cause for dissolution of the Company. No new Members will be entitled to any retroactive allocation of any item of Company income, gain, loss, deduction or credit.

11.4 Adjustments to Take Account of Interim Admissions and Repurchases

In the event that (a) a Member shall tender or be required to tender from the Company other than at the time required by the Memorandum, or (b) a Member is admitted to the Company pursuant to Section 11.3 other than at the time required by the Memorandum, the calculation of NAV per Unit and/or Net Asset Value for the Company or any Class, including the taxes thereon and accounting procedures, shall equitably take into account such interim event and accrued income and expense items and the determination thereof by the Managing Member shall be binding and conclusive as to all of the Members and former Members of the Company.

11.5 Transfers to Charitable Trust

(a) If any Transfer of Units or Other Event occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Units in violation of Section 11.1(c), (A) then that portion of Units the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 11.1(c) (rounded up to the nearest whole Unit) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in Section 11.6, effective as of the close of

business on the Business Day prior to the date of such Transfer or Other Event, and such Person shall acquire no rights in such Units, or (B) if the transfer to the Charitable Trust described in clause (A) of this sentence would not be effective for any reason to prevent the violation of Section 11.1(c), then, to the fullest extent permitted by law, the Transfer or Other Event that otherwise would cause any Person to violate Section 11.1(c) shall be void ab initio and the intended transferee shall acquire no rights in such Units and the intended transferor will continue to be required to fund its Capital Commitment.

(b) In determining which Units are to be transferred to the Charitable Trust in accordance with this Section 11.5 and Section 11.6, Units shall be so transferred to a Charitable Trust in such manner that minimizes the aggregate value of the Units that are transferred to the Charitable Trust (except to the extent that the Managing Member determines that the Units transferred to the Charitable Trust shall be those directly or indirectly held or Beneficially Owned or Constructively Owned by a Person or Persons that caused or contributed to the application of Section 11.1(c)), and to the extent not inconsistent therewith, on a pro rata basis.

(c) To the extent that, upon a transfer of Units pursuant to this Section 11.5 and Section 11.1(c), a violation of any provision of Section 11.1(c) would nonetheless be continuing, the Units shall be transferred to that number of Charitable Trusts, each having a distinct Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Charitable Trust, such that there is no violation of any provision of Section 11.1(c).

(d) If the Managing Member or other designees permitted by the Delaware Act and this Agreement shall at any time determine in good faith that a Transfer or Other Event has taken place that results in a violation of Section 11.1(c) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Units in violation of Section 11.1(c) (whether or not such violation is intended), the Managing Member or other designees permitted by the Delaware Act and this Agreement shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or Other Event, including, without limitation, causing the Company to repurchase Units, refusing to give effect to such Transfer on the books of the Company or instituting proceedings to enjoin such Transfer or Other Event; provided, however, that any Transfers or attempted Transfers or Other Events in violation of Section 11.1(c) shall automatically result in the transfer to the Charitable Trust described above, or, where applicable, such Transfer (or Other Event) shall be, to the fullest extent permitted by law, void ab initio as provided above irrespective of any action (or non-action) by the Managing Member or such designee.

(e) Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Units that will or may violate Section 11.1(c) or any Person who would have owned Units that resulted in a Transfer to the Charitable Trust pursuant to the provisions of Section 11.1(c) shall immediately give written notice to the Company of such event, or in the case of such a proposed or attempted transaction, give at least fifteen (15) days prior written notice, and shall provide to the Company such other

information as the Company may request in order to determine the effect, if any, of such Transfer on the REIT Subsidiary.

(f) Nothing contained in this Section 11.5 shall limit the authority of the Managing Member to take such other action as it deems necessary or advisable to protect the Company and the interests of its Members in preserving the status of the REIT Subsidiary as a REIT.

(g) In the case of an ambiguity in the application of any of the provisions of this Article 11, including any definition contained in Article 1 relating to this Article 11, the Managing Member shall have the power to determine the application of the provisions of this Article 11 with respect to any situation based on the facts known to it. In the event this Article 11 requires an action by the Managing Member and this Agreement fails to provide specific guidance with respect to such action, the Managing Member shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article 11. Absent a decision to the contrary by the Managing Member (which the Managing Member may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in this Article 11) acquired or retained Beneficial Ownership or Constructive Ownership of Units in violation of Section 11.1(c), such remedies (as applicable) shall apply first to the Units which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Units based upon the relative number of the Units held by each such Person.

(h) Exceptions.

(i) The Managing Member, in its sole discretion, may exempt a Person from the Ownership Limit and may establish or increase an Excepted Holder Limit for such Person if the Managing Member obtains such representations, covenants and undertakings from such Person as the Managing Member may deem appropriate in order to conclude that granting the exemption and/or establishing or increasing the Excepted Holder Limit, as the case may be, will not adversely affect the qualification as a REIT of the REIT Subsidiary. In addition, prior to granting any exception pursuant to this Section 11.5(h), the Managing Member may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Managing Member in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the status as a REIT of the REIT Subsidiary. Notwithstanding the receipt of any ruling or opinion, the Managing Member may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(ii) An underwriter or placement agent that participates in a public offering or a private placement of Units (or securities convertible into or exchangeable for Units) may Beneficially Own or Constructively Own Units (or securities convertible into or exchangeable for Units) in excess of the Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement and provided that the restrictions contained in Section 11.1(c) will not

be violated following the distribution by such underwriter or placement agent of such Units.

(i) The Managing Member may from time to time increase or decrease the Ownership Limit; provided, however, that a decreased Ownership Limit will not be effective for any Person whose percentage ownership of Units is in excess of such decreased Ownership Limit until such time as such Person's percentage of Units equals or falls below the decreased Ownership Limit, but until such time as such Person's percentage of Units falls below such decreased Ownership Limit, any further acquisition of Units will be in violation of the Ownership Limit.

11.6 Transfers of Units in Trust

(a) Upon any purported Transfer or Other Event described in Section 11.5 that would result in a transfer of Units to a Charitable Trust, such Units shall be deemed to have been transferred to the Trustee as trustee for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or Other Event that results in the transfer to the Charitable Trust pursuant to Section 11.1(c). The Trustee shall be appointed by the Company and shall be a Person unaffiliated with the Company and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Company as provided in Section 11.6(f).

(b) Units held by the Trustee shall continue to be issued and outstanding Units of the Company. The Prohibited Owner shall have no rights in the Units held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any Units held in trust by the Trustee, shall have no rights to distributions with respect to the Units held in the Charitable Trust and shall not possess any rights to vote or other rights attributable to the Units held in the Charitable Trust.

(c) The Trustee shall have all voting rights and rights to distributions with respect to Units held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any distribution paid to a Prohibited Owner prior to the discovery by the Company that the Units have been transferred to the Trustee shall be paid with respect to such Units by the Prohibited Owner to the Trustee upon demand and any distribution authorized but unpaid shall be paid when due to the Trustee. Any distributions so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights (whether arising hereunder or under the Delaware Act) with respect to Units held in the Charitable Trust and, subject to applicable law, effective as of the date that the Units have been transferred to the Trust, the Trustee shall have the authority (at the Trustee's sole discretion) (1) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Company that the Units have been transferred to the Trustee and (2) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Company has already taken irreversible limited liability company action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article 11, until the Company has received

notification that Units have been transferred into a Charitable Trust, the Company shall be entitled to rely on its Unit transfer and other Member records for purposes of preparing lists of Members entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of Members.

(d) Within twenty days of receiving notice from the Company that Units have been transferred to the Charitable Trust, the Trustee of the Charitable Trust shall sell the Units held in the Charitable Trust to a Person, designated by the Trustee, whose ownership of the Units will not violate the ownership limitations set forth in Section 11.1(c). Upon such sale, the interest of the Charitable Beneficiary in the Units sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 11.6(d). The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the Units or, if the Prohibited Owner did not give value for the Units in connection with the event causing the Units to be held in the Charitable Trust (e.g., in the case of a gift, devise or other such transaction), the fair market value, as determined by the Managing Member, of the Units on the day of the event causing the Units to be held in the Charitable Trust and (2) the price per Unit received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the Units held in the Charitable Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of distributions paid to the Prohibited Owner and owed by the Prohibited Owner to the Trustee pursuant to Section 11.6(c). Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Company that Units have been transferred to the Trustee, such Units are sold by a Prohibited Owner, then (i) such Units shall be deemed to have been sold on behalf of the Charitable Trust and (ii) to the extent that the Prohibited Owner received an amount for such Units that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 11.6(d), such excess shall be paid to the Trustee upon demand. Upon the sale or deemed sale of Units by the Trustee pursuant to this Section 11.6(d), the purchaser shall be responsible for the Capital Commitment and the obligations of the prohibited transferor with respect to the Unit transferred and the Prohibited Owner shall be released from any obligations with respect to such Capital Commitment.

(e) Units transferred to the Trustee shall be deemed to have been offered for sale to the Company, or its designee, at a price per Unit percentage equal to the price per Unit percentage in the transaction that resulted in such transfer to the Charitable Trust (or, in the case of a devise or gift, the fair market value of Units, as determined by Managing Member, at the time of such devise or gift). The Company may reduce the amount payable to the Prohibited Owner by the amount of distributions paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to Section 11.6(c). The Company may pay the amount of such reduction to the Trustee for the benefit of the Charitable Beneficiary. The Company shall have the right to accept such offer until the Trustee has sold the Units held in the Charitable Trust pursuant to Section 11.6(d). Upon such a sale to the Company, the interest of the Charitable Beneficiary in the Units sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and any distributions held by the Trustee shall be paid to the Charitable Beneficiary.

(f) By written notice to the Trustee, the Company shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) the Units held in the Charitable Trust would not violate the restrictions set forth in Section 11.1(c) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under one of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

ARTICLE 12 MEMBERS' LIABILITY

12.1 Members' Liability

(a) To the fullest extent permitted by the Delaware Act and all other applicable law, and except as provided in Section 9.8, no Member shall be personally liable or obligated under a judgment, decree or order of a court, or in any other manner, for the Company's debts, liabilities, or obligations, whether arising in contract, tort or otherwise.

(b) If a Member has received the return of any part of its Capital Contribution in violation of this Agreement or the Delaware Act, such Member shall be liable to the Company for a period of three (3) years thereafter for the amount of the Capital Contribution wrongfully returned.

(c) Any liability of a Member to the Company under this Article 12 can be waived or compromised by the Managing Member. A Member who is subject to an obligation to repay any Capital Contribution to the Company as required by this Agreement shall make such repayment on demand by the Company. Except as provided in Section 9.8, no Member shall be liable to the Company, its creditors or any other Member with respect to any amounts paid to such Member as distributions that are not paid to such Member as a return of such Member's Capital Contribution.

ARTICLE 13 RESIGNATION AND REPLACEMENT OF MANAGING MEMBER

13.1 Resignation and Replacement of Managing Member

The Managing Member may be changed in the following manner:

(a) the Managing Member may resign as Managing Member of the Company upon ninety (90) days' prior written notice to all of the Members without designating a successor Managing Member, and Article 10 shall apply;

(b) the Managing Member may resign as Managing Member of the Company upon ninety (90) days' prior written notice to all of the Members, and may designate an Affiliate of the Managing Member to serve as Managing Member effective upon its resignation, without the consent of the Members;

(c) the Managing Member may designate an Affiliate of the Managing Member to be added as a manager of the Company without the consent of the Members;

(d) the Managing Member may resign as Managing Member of the Company upon ninety (90) days' prior written notice to all of the Members, and may designate a non-Affiliate of the Managing Member to be substituted as Managing Member and thereby assign its rights and obligations under this Agreement by notice mailed to the address of record of each Member that is not objected to in writing within thirty (30) days of such mailing by Members representing more than 50% of the issued and outstanding Units of the Company (exclusive of any Defaulting Members);

(e) the Managing Member may designate a non-Affiliate of the Managing Member to be added as a manager of the Company by notice mailed to the address of record of each Member that is not objected to in writing within thirty (30) days of such mailing by Members representing more than 50% of the issued and outstanding Units of the Company (each such designate in sub-sections (b), (c), (d) and (e), a "Designee") (exclusive of any Defaulting Members); or

(f) the Managing Member without the consent of the Members may make a Transfer of all or any portion of its Units by operation of law.

If the Members fail to approve the appointment of a Designee pursuant to sub-section (d) above, the resignation of the Managing Member shall nevertheless be effective, and Article 10 shall apply. Any Designee to be added as a manager shall be deemed to be admitted upon its execution of a counterpart or other applicable document related to this Agreement. Any such Designee to be substituted shall be deemed to be admitted immediately prior to the effective date of the resignation of the Managing Member. Upon admission to the Company, a Designee shall become, and have all of the rights, powers and duties of, the Managing Member for all purposes of this Agreement.

13.2 Effect of Changes in Members, Partners, Managers, Directors or Officers of the Managing Member

Except as required by applicable law, changes in the members, partners, managers, directors or officers of the Managing Member shall not require the consent of the Members and shall not dissolve the Company.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Entire Agreement

This Agreement, together with the Memorandum and the Subscription Agreement, contains the entire understanding of the Members with respect to the subject matter of this Agreement, and supersedes any prior written or oral understanding, agreement or commitment with respect to such subject matter.

14.2 Notices

All notices, consents, waivers, and other communications under this Agreement will be in writing and will be deemed given to a party or to the Company when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment, or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses, facsimile numbers or e-mail address and marked to the attention of the individual (by name or title) (if any) as shown in the books and records of the Company and to the Company at its principal office, or to such other address, facsimile number, e-mail address or individual as a Member or the Company may designate by notice to the other parties.

14.3 Defaulting Members

(a) If any Member (a “Defaulting Member”) fails to make full payment when due (a “Payment Default”) of any portion of its Capital Commitment or any other payment required under this Agreement or such Member’s Subscription Agreement for its Units in the Company (the amount of such defaulted payments in the aggregate, including all accrued and unpaid interest thereon, and together with any other unpaid amounts that are due and owing by such Member thereunder, the “Defaulted Amounts”) and such Payment Default is not cured within ten (10) business days after written notice to such Defaulting Member from the Managing Member with respect to such Payment Default, the Managing Member in its sole discretion, on its own behalf or on behalf of the Company, may (but shall not be obligated to) pursue and enforce any and all rights and remedies the Company and/or the Managing Member may have against such Defaulting Member at law, in equity or pursuant to any other provision of this Agreement or otherwise with respect thereto, including taking any one or more of the following actions in any order of priority:

(i) In addition to all Defaulted Amounts owed by the Defaulting Member, the Company may (A) accrue and collect interest computed on all Defaulted Amounts and any amount due to the Company or the Managing Member pursuant to this Section 14.3 at an annual compounded rate of ten percentage (10%) points per annum (or if limited by applicable law, the highest rate per annum permitted by applicable law), and/or (B) require reimbursement from the Defaulting Member for all out-of-pocket expenses (including for attorneys’ fees) incurred by the Company and the Managing Member in connection with the collection and other efforts in respect of the Defaulted Amounts (which payment of such interest and expense reimbursement shall not be treated as a Capital Contribution by the Defaulting Member). The Managing Member may require the payment of such interest and expense reimbursement whether or not it exercises any rights or remedies.

(ii) So long as any Defaulted Amounts remain unpaid, the Company may withhold all distributions (or portions thereof) that would otherwise be made to the Defaulting Member pursuant to this Agreement and apply such withheld distributions to offset any Defaulted Amounts owing by the Defaulting Member to

the Company or the Managing Member under this Agreement or any other agreement.

(iii) The Managing Member may assist the Defaulting Member in finding a buyer for all or any part of the Defaulting Member's Units in the Company; provided that the Managing Member shall not have any obligation to contact any particular Member or other Person with regard to such sale and shall have no liability to any Member, including the Defaulting Member, if no such buyer is found.

(iv) The Company and the Managing Member may pursue a lawsuit to collect the Defaulted Amounts due to the Company and the Managing Member including amounts owed pursuant to Section 14.3(a)(i) and/or 14.3(a)(ix). The Managing Member may require the payment of such interest and expense reimbursement whether or not it exercises any rights or remedies.

(v) Subject to Section 14.3(a)(vii), the Managing Member may cause the Defaulting Member to forfeit up to fifty percent (50%) of its Units in the Company without payment or other consideration therefor, and the Managing Member shall offer to transfer, for no consideration, such forfeited Units of the Defaulting Member to the other Members (other than any Defaulting Members) pro rata according to their respective Capital Commitments or the forfeited Units may be cancelled. The Managing Member shall provide a notice to each Member (other than Defaulting Members) setting forth the amount of the forfeited Units of the Defaulting Member offered to such Member. In the event that any Member does not elect to accept its pro rata share of the forfeited Units of a Defaulting Member, such forfeited Units will be offered again by the Managing Member according to the provisions of this Section 14.3(a)(v) as if such forfeited Units had not previously been offered until either all of such Units are acquired or no Member wishes to accept any further portion.

(vi) Subject to Section 14.3(a)(vii), to the extent a Defaulting Member's Units are not forfeited and reallocated pursuant to Section 14.3(a)(v) (including the remaining portion of such Defaulting Member's Units not subject to forfeiture), the Managing Member may offer to the other Members (other than any Defaulting Members) the portion of the Defaulting Member's Units that are not forfeited and reallocated pursuant to Section 14.3(a)(v) at the applicable NAV per Unit on the effective date such Defaulting Member's interest is sold. If the remaining portion of the Defaulting Member's Units are not purchased in the manner set forth herein, the Managing Member in its sole discretion may offer the remaining Units to a third party or parties on terms not more favorable than originally offered to the Members, in which case such third party or parties shall, as a condition of purchasing such interest, become a party to this Agreement.

(vii) The Managing Member may reduce (and such reduction shall be deemed to be effective as of the actual date of the Payment Default, without giving effect to any applicable cure period, or as of such later date as is determined by the

Managing Member) any portion of such Defaulting Member's Capital Commitment (which has not been assumed by another Partner or third party) to the amount of the Capital Contributions (which have not been acquired by another Partner or third party) made by such Defaulting Member and the aggregate Capital Commitments of the Company shall be commensurately reduced; provided that no such reduction in a Defaulting Member's Capital Contribution shall be effective as against a Lender that has advanced funds to the Company on account of such Capital Commitment.

(b) No consent of any Member shall be required as a condition precedent to any Transfer of a Defaulting Member's Units, or the admission of a transferee as a substitute Member with respect to such Units, pursuant to this Section 14.3.

(c) The Managing Member shall handle the procedures of making the offers set forth in this Section 14.3 and shall in its discretion set time limits for acceptance. In connection with any purchase of Units pursuant to this Section 14.3, upon the Managing Member's request, the Defaulting Member shall make customary representations and warranties to each purchaser and will execute a customary transfer agreement.

(d) The failure of any Member to fulfill an obligation hereunder shall not relieve any other Member of any of its obligations under this Agreement.

(e) Notwithstanding the notice requirements of Section 4.2, additional Capital Contributions may be called by the Managing Member on five (5) business days' notice following a Member failing to fund any amount due pursuant to a Capital Call Notice. In addition, the Managing Member is authorized to apply amounts that would otherwise be distributed to a Member to satisfy such Member's obligation to make a Capital Contribution pursuant to Section 4.2 or any other payment required under this Agreement. Such amounts applied shall be deemed distributed to such Member by the Company and then contributed by such Member to the Company as Capital Contributions or paid by such Partner to the Company, as applicable.

(f) Notwithstanding anything in this Agreement to the contrary and unless otherwise determined by the Managing Member in its sole discretion, during any period of time that a Member is a Defaulting Member, such Defaulting Member shall not be entitled to receive any of the reports, or information contained therein, or any other information regarding the Company or any investment, other than (i) a statement of such Defaulting Member's closing Capital Account balance as and when provided by the Managing Member to the other Members, (ii) the Defaulting Member's Schedule K-1s, as and when provided by the Managing Member to the other Members, and (iii) any additional reports and information that are required by applicable law.

(g) Each Member hereby acknowledges that certain provisions of this Agreement (including this Section 14.3) provide for specific consequences in the event of a breach of this Agreement by a Partner. Each Partner hereby agrees that the default provisions of this Agreement are fair and reasonable and, in light of the difficulty of determining actual damages, represent a prior agreement among the Partners as to

appropriate liquidated damages. Without limiting the general effect of the preceding sentence, the Partners hereby specifically acknowledge and agree that the enforceability of this Section 14.3 is essential to the stability of the Company as an organization and to the ability of the Company to effectively serve its purpose and conduct its business operations.

(h) Each Member hereby specifically agrees that, in the event such Member becomes a Defaulting Member, regardless of the reason therefor, such Member shall not be entitled to claim that the Company or any of the other Members are precluded, on the basis of any fiduciary or other duty arising in respect of such Member's status as such or other equitable claim or theory, from seeking any of the penalties or other remedies permitted under this Agreement or applicable law.

14.4 Amendments

(a) The terms and provisions of this Agreement may be modified or amended at any time and from time to time: (i)(a) with the written consent of the affected Members whose Units, in the aggregate, represent more than 50% of the Units of all affected Members (excluding any Defaulting Members) or (b) by the "negative consent" of affected Members by notice mailed to the address of record of each affected Member that is not objected to in writing within thirty (30) days of mailing by the affected Members whose Units, in the aggregate, represent more than 50% of the Units of affected Members (excluding any Defaulting Members); and (ii) with the written consent of the Managing Member. Notwithstanding the foregoing, the Managing Member may, without the consent of any Member, amend this Agreement to: (i) reflect the admission of new Members or the repurchase of existing Members in accordance with the provisions of this Agreement and changes validly made in the Capital Contributions of the Members; (ii) reflect a change in the name of the Company; (iii) make a change that is necessary or, in the Managing Member's opinion, advisable to qualify the Company as a limited liability company in which the Members have limited liability under the laws of any state, or ensure that the Company will not be treated as an association taxable as a corporation for federal income tax purposes; (iv) make a change that is necessary or desirable to cure any ambiguity, to correct or supplement any provision in this Agreement that would be inconsistent with any other provision in this Agreement, in each case so long as such change does not adversely affect the Members; (v) enter into side letters with Members that are in variance with the terms of this Agreement; (vi) make a change that is necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state statute, so long as such change is made in a manner that minimizes any adverse effect on the Members, or make a change that is required or contemplated by this Agreement; (vii) make a change in any provision of this Agreement that requires any action to be taken by or on behalf of the Managing Member or the Company pursuant to the requirements of applicable Delaware law if the provisions of applicable Delaware law are amended, modified or revoked so that the taking of such action is no longer required; (viii) prevent the Company or the Managing Member from in any manner being deemed an "investment company" subject to the provisions of the Investment Company Act of 1940, as amended; (ix) prevent the Managing Member from becoming a fiduciary (as such term is used under ERISA) and to avoid Company assets being deemed "plan assets" of any ERISA Member; (x) make any amendment which does not adversely

affect the Members; (xi) enable the Company to invest all or any portion of its assets in the REIT Subsidiary and/or other special purpose vehicle(s); (xii) maintain the REIT Subsidiary's status as a REIT, and allow the REIT Subsidiary to avoid classification as (a) a pension held REIT under Section 856(h) of the Code or (b) other than a domestically controlled qualified investment entity under Section 897(h) of the Code; or (xiii) make any other amendments similar to the foregoing. Notwithstanding any provision in this Agreement to the contrary, no amendment to this Agreement shall increase the liability of a Member without such Member's consent.

(b) Notwithstanding anything in Section 14.4(a) to the contrary, no amendment will be valid as to any Member (including a Defaulting Member) which increases or decreases such Member's Capital Commitment without the written consent of such Member.

(c) Notwithstanding anything in Section 14.4(a) to the contrary, so long as a Credit Facility is outstanding, no amendment of or supplement to this Agreement will be valid as to any Lender under such Credit Facility (unless such Lender provides its prior written consent) that would materially adversely affect such Lender.

14.5 Written Consent

Unless otherwise specified in this Agreement or in the Delaware Act, any action to be taken on any matter may be submitted to the Members and shall be deemed approved if a consent in writing, setting forth the action or matter, is signed by the Members owning more than 50% of the issued and outstanding Units of the Company (exclusive of Defaulting Members); provided that the Managing Member shall give prompt notice to Members who have not given consent of the taking of action by written consent of the Members. Any written consent may be executed in any number of counterparts, each of which shall be deemed an original. The Managing Member may require Members to respond in the negative within a reasonable amount of time to a proposed action or be deemed to have consented thereto.

14.6 Power of Attorney

Each Member hereby irrevocably constitutes and appoints the Managing Member and each officer of the Managing Member, as his true and lawful representative and attorney-in-fact, with full power of substitution and revocation, in his name, place and stead, to make, execute, sign and file (i) any amendment to the Certificate and all such other instruments, documents and certificates which may, from time to time, be required by the laws of the United States of America, the State of Delaware or any other state or political subdivision in which the Company shall determine to do business, to effectuate, implement and continue the valid existence of the Company, (ii) this Agreement, including any amendments and/or restatements hereto duly adopted as provided herein, (iii) any limited liability company certificate, business certificate, fictitious name certificate, or amendment thereto, or other instrument or document of any kind necessary or desirable to accomplish the business purpose and objectives of the Company, or required by any applicable federal, state, local or foreign law, (iv) all conveyances and other instruments which may be required to be filed by the Company or the Members under the laws of any jurisdiction or under any amendments or successor statutes to the Delaware Act, to reflect the dissolution or

termination of the Company or the Company being governed by any amendments or successor statutes to the Delaware Act or to reorganize the Company in a different jurisdiction, and (v) to file, prosecute, defend, settle or compromise litigation, claims or arbitrations on behalf of the Company. The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest (including, without limitation, the interest of the other Members in the Managing Member being able to rely on its authority to act as contemplated by this Section 14.5) and shall survive and shall not be affected by the subsequent incapacity, disability or death of a Member.

14.7 Waiver of Action for Partition

Except as otherwise expressly provided in this Agreement, the Members, on behalf of themselves and their shareholders, members, partners, heirs, executors, administrators, personal or legal representatives, successors and assigns, if any, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, to seek, bring or maintain any action in any court of law or equity for partition of the Company or any asset of the Company, or any interest that is considered to be Company property, regardless of the manner in which title to any such property may be held.

14.8 Side Letters

Notwithstanding anything to the contrary contained in this Agreement or any Subscription Agreement, the Members agree that: (a) the Managing Member and/or Investment Manager, on their own behalf or on behalf of the Company, and without the approval of any other Member or any other Person, may enter into a side letter or similar written agreement to or with one or more Members to establish rights under, or alter or supplement the terms of this Agreement or the Subscription Agreement of such Member(s), in each case, solely with respect to such Member(s) (a “Side Letter”); and (b) any terms contained in any such Side Letter to or with one or more Members may be amended by written agreement of such Member(s) and the Managing Member and/or Investment Manager, on their own behalf or on behalf of the Company, and which terms shall apply solely to such Member(s) notwithstanding anything to the contrary contained in this Agreement or any Subscription Agreement.

14.9 Confidential Information

(a) Each Member shall keep confidential, shall not disclose, or permit any of its Affiliates to disclose, and shall use solely in connection with the evaluation of such Member’s Interest any information or materials regarding the Managing Member, Investment Manager, the other Members, REIT Subsidiary and any of their respective Affiliates, or any information provided by the Managing Member, Investment Manager or the Company concerning any Investment (whether or not such information or materials have been designated by the Managing Member, Investment Manager or the Company as confidential) (collectively, all of the foregoing information and materials, “Company Confidential Information”), except to the extent, and only to the extent, that (i) the disclosure of such information or materials is required by law or is required to be included in any legally required reports or filings, (ii) the information or materials were previously known to such Member, (iii) the information or materials become publicly known other than through the actions or inactions of such Member or its Affiliates, employees,

representatives, agents or attorneys or (iv) the disclosure of such information and materials by such Member is to its Affiliates, directors, trustees, employees, representatives, agents, investors, auditors or attorneys (provided that, in each case, such Persons agree in writing to keep such information and materials confidential to the same extent as if they were Members of the Company, including as to the use of such information and materials, are bound by other confidentiality obligations substantially similar to the obligations set forth in this Section 14.9 or are otherwise required under law to keep such information confidential, or have been informed in writing of the confidential nature of such information and such Persons have agreed to keep such information confidential). Without limiting the foregoing, in the event that any Member or its Affiliates are required by any law, statute, governmental rule or regulation or judicial or governmental order, judgment or decree to disclose any such Company Confidential Information, prior to such disclosure such Person shall use reasonable efforts to promptly notify the Manager in writing of such anticipated disclosure (and shall in any case notify the Manager in writing as soon as reasonably practicable), and such Person shall reasonably cooperate with the Managing Member to preserve the confidentiality of such information consistent with applicable laws; provided that in connection with routine and customary disclosures by a Member to regulatory authorities to which such Member is subject, such Member shall not be required to notify the Managing Member of such disclosures.

(b) The obligations and undertakings of each Member under this Section 14.9 shall be continuing and shall survive termination of the Company and this Agreement. Any restriction or obligation imposed on a Member pursuant to this Section 14.9 may be waived by the Managing Member in its discretion. Any such waiver or modification by the Managing Member shall not constitute a breach of this Agreement or of any duty stated or implied in law or in equity, regardless of whether different agreements are reached with different Members.

(c) The parties hereto agree that irreparable damage would occur if the provisions of this Section 14.9 were breached. It is accordingly agreed that the parties hereto shall be entitled to seek an injunction or injunctions to prevent breaches of this Section 14.9 and to seek specific performance of the terms and provisions hereof in any court of the United States or any state having jurisdiction, in addition to any other remedy to which they are entitled at law or in equity.

14.10 Severability

If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

14.11 Assignment; Successors; No Third Party Rights

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties except to a transferee in connection with a Transfer permitted under Section 11.1. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of each Member's heirs, executors, administrators and permitted assigns. Nothing expressed or referred to in this

Agreement will be construed to give any person, other than the parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement except such rights as may inure to a successor or permitted assignee under this Section.

14.12 No Waiver

The failure of any Member or the Managing Member to seek redress for violation, or to insist on strict performance, of any covenant or condition of this Agreement shall not prevent a subsequent act that would have constituted a violation from having the effect of an original violation. No provision of this Agreement shall be deemed to have been waived except if the giving of such waiver is contained in a written notice given to the party claiming such waiver, and no such waiver shall be deemed to be a waiver of any other or future obligation or liability of the party or parties in whose favor the waiver was given.

14.13 Governing Law

This Agreement will be governed by and construed under the laws of the State of Delaware, without regard to conflicts of laws principles that would require the application of any other law.

14.14 Survival

All indemnities and reimbursement obligations made pursuant to this Agreement shall survive dissolution and liquidation of the Company until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified or reimbursed, as the case may be.

14.15 Anti-Money Laundering

Notwithstanding any other provision of this Agreement to the contrary, the Managing Member, on its own behalf or on behalf of the Company, is hereby authorized to take any action contemplated in the Subscription Agreement or other action which it determines, in good faith, is required to comply with anti-money laundering or anti-terrorism legislation or regulation, without any further act, vote or approval of any Person.

14.16 Variations of Pronouns

All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

14.17 Captions and References

Titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement and references to a "Section" or a "Subsection" are, unless otherwise specified, to a section or a subsection of this Agreement.

14.18 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which taken together shall constitute one Agreement, with delivery of an executed signature page to this Agreement by facsimile or by electronic mail in portable document format (PDF) effective as delivery of a manually executed signature page of this Agreement or more counterparts.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

ORIGIN INCOMEPLUS FUND, LLC
as Managing Member

By: /s/ Michael McVickar
Name: Michael McVickar
Title: General Counsel and Chief Compliance Officer

All Members now and hereafter admitted as Members of the Company, pursuant to the authority granted hereunder to the Managing Member

By: **Origin Income Manager, LLC**,
as Managing Member

By: /s/ Michael McVickar
Name: Michael McVickar
Title: General Counsel and Chief Compliance Officer