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**BREF Fund I, LLC**

*A New York Limited Liability Company*

**Limited Liability Company Operating Agreement**

Dated as of the First Closing Date (as defined herein)

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**LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
OF  
BREF FUND I, LLC**

This Limited Liability Company Operating Agreement (this “Agreement”) of BREF Fund I, LLC, a New York limited liability company, with an address located at 927 Columbus Avenue, New York, New York 10025 (the “Company”), is entered into by and among: (i) the initial purchasers of the membership interests in the Company on the First Closing Date pursuant to the terms and conditions of the Subscription Documents (such initial persons, in their capacity as the initial members of the Company being referred to in this Agreement as the “Initial Members”; and (ii) other Persons who purchase or otherwise acquire membership interests in the Company (regardless of whether such membership interests are Class A Interests (as defined below) or Class B Interests (as defined below) or Class C Interests (as defined below)) and become members in the Company in compliance with the terms of this Agreement (together with the Initial Members, the “Members” and each, a “Member”). Capitalized terms used in this Agreement have the respective meanings ascribed thereto in ARTICLE II.

**ARTICLE I  
GENERAL PROVISIONS**

Section 1.1 Formation. The Company was formed as a limited liability company pursuant to and in accordance with Section 203 of the Limited Liability Company Law of New York, as amended from time to time (the “Act”), by the filing of the Certificate of Formation (the “Certificate”) with the Secretary of State of the State of New York (the “Secretary of State”) on January 5, 2021. The Managing Member (as defined below), for itself and as agent for the Members, shall accomplish all filing, recording, publishing, and other acts necessary or appropriate for compliance with all the requirements for the formation and operation of the Company as a limited liability company under this Agreement and the Act, and under all other laws of the State of New York and such other jurisdictions in which the Managing Member determines that the Company may conduct business. Each Member admitted to the Company shall promptly execute all relevant certificates and other documents, as the Managing Member shall from time-to-time reasonably request.

Section 1.2 Name. The name of the Company is and shall be “BREF Fund I, LLC.” The Managing Member is authorized to make any variations in the name of the Company and may otherwise conduct business of the Company under any other name, upon compliance with all applicable laws, which in either case the Managing Member may deem necessary or advisable. In the case of a change of name of the Company pursuant to this Section 1.2, specific references herein to the name of the Company shall be deemed to have been amended to the name as so changed.

Section 1.3 Purpose. The Company was formed for the following purposes:

(a) The purpose of the Company is to carry on any and all lawful businesses and activities that may be conducted by a limited liability company organized under the Act; *provided however*, the Company cannot engage in any business other than the business of real

estate development in the United States (each a “Project”) without the consent of the Managing Member and a Majority Vote. The Managing Member is generally authorized to perform all acts it determines to be necessary or appropriate to carry out the purposes and to conduct the business.

(b) The Managing Member has determined first investment to be for the redevelopment of a single-family home located at 3129 Fenton Avenue, Bronx, New York into a multi-family residential dwelling (the “Initial Project”).

(c) The Company may also engage in such activities incidental or ancillary to the purposes and strategy noted above as the Managing Member shall deem necessary or advisable.

(d) The Company intends to organize, launch and market one or more Regulation D offerings. In addition, the Company intends to organize, launch and market one or more Regulation CF offerings and/or Regulation A+ offerings (each, a “Crowdfunding Offering”) after the date hereof. Each Class A Member and Class B Member who purchases Membership Interests in the first Crowdfunding Offering consummated by the Company after the date of their initial Capital Contribution to the Company (the “Next Offering”) will have the right to receive additional Membership Interests of the same class as such Member purchased in the Next Offering in an amount equal to the number of Membership Interests purchased by such Member in the Next Offering multiplied by 20% (up to a maximum limit of \$100,000).

Section 1.4 Office. The Company shall maintain a registered office as specified in the Certificate, or elsewhere as the Managing Member may from time to time determine. The Company may have more than one office as may from time to time be determined by the Managing Member and may at any time change the location of the Company’s office(s). Notice of any such change shall be given to the Members. The Company’s current registered offices shall be 927 Columbus Avenue, New York, New York 10025. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State pursuant to the Act.

Section 1.5 Fiscal Year and Fiscal Quarter. The fiscal year of the Company shall end on December 31 of each year (the “Fiscal Year”). The Fiscal Year may be changed by the Managing Member. In the event that the Managing Member changes the Company’s Fiscal Year, the dates and time periods referred to in this Agreement shall be appropriately adjusted. The term “Fiscal Quarter” shall mean any one or more of the following: (a) January 1 to March 31 of each Fiscal Year; (b) April 1 to June 30 of each Fiscal Year; (c) July 1 to September 30 of each Fiscal Year; (d) October 1 to December 31 of each Fiscal Year; and (e) such other periods as may be designated from time to time as a Fiscal Quarter by the Managing Member. The Company’s taxable year shall be its Fiscal Year to the extent permitted by applicable tax laws.

Section 1.6 Term. The term of the Company commenced upon the filing of its Certificate, and shall, unless the Company is dissolved forthwith upon the occurrence of any one of the events set forth in Section 14.1 below, continue until the tenth (10th) anniversary of the First Closing Date (the “Initial Term”); provided, however, that the Initial Term of the Company may be extended by the Managing Member, in its discretion, (a) at any time prior to the end of the Initial Term, for an additional thirty-six (36) month period (the “First Additional Period”) if necessary for an orderly liquidation of the Company’s investments; or (b) such period (the

“Obligation Period”) as any covenant or restriction requires which is contained in loan agreements or other obligations to which the Company or the Project is subject. (The First Additional Period, and the Obligation Period are each referred to as an “Additional Period”). In the event that the Managing Member desires to extend the Initial Term for any Additional Period as provided in this Section 1.6, the Managing Member shall give written notice of such extension to each Member not less than thirty (30) days prior to the expiration of the Initial Term or any other Additional Period, as applicable.

## **ARTICLE II** **DEFINITIONS**

Section 2.1 Defined Terms. Each of the following capitalized terms shall have the respective meaning ascribed to such term in this Section.

(a) “Adjusted Capital Account” shall mean, with respect to any Member at any time, such Member’s Capital Account at such time (i) increased by the sum of (A) the amount of such Member’s share of partnership minimum gain (as defined in Regulations Section 1.704-2(g)(1)), (B) the amount of such Member’s share of the minimum gain attributable to a member nonrecourse debt and (C) the amount of the deficit balance in such Member’s Capital Account which such Member is obligated to restore, if any; and (ii) decreased by reasonably expected adjustments, allocations and distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5) and (6). The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(b) “Affiliate” shall mean, when used with reference to a specified Person, any Person which directly or indirectly through one or more intermediaries’ controls, is controlled by or is under common control with a specified Person. For purposes hereof, the terms “control”, “controlled”, or “controlling” with respect to a specified Person shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such Person, directly or indirectly, or acting through one or more Persons, (ii) the control in any manner over the Managing Member(s) or the election of more than one director or trustee (or persons exercising similar functions) of such Person, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such Person.

(c) “Business Day” shall mean any day on which banks located in New York are not required by law to remain closed.

(d) “Capital Commitment” and “Capital Commitments” shall mean, with respect to any Member, the amount of capital committed to be contributed to the Company by such Member as set forth in such Member’s Subscription Documents, counterpart signature page of this Agreement, or such other documents executed in connection with such Member’s admission to the Company, as such amount may be amended from time to time pursuant to the provisions of this Agreement.

(e) “Capital Contribution”, “Capital Contributions” and “Capital Contributed” shall mean, with respect to any Member, the amount of capital contributed by such Member to the Company under this Agreement and subject to such adjustments as are provided hereby.

(f) “Class A Interests” means any Membership Interest denominated “Class A” hereunder, including all of the rights of a Class A Member in the Company, expressed as a percentage, including such Class A Member’s: (i) right to share in the profits and losses of the Company; (ii) right to inspect the Company’s books and records; (iii) the right to participate in the management of and vote on matters coming before the Class A Members, to the extent provided in this Agreement, and (iv) to the extent permitted under this Agreement, the right to act as an agent of the Company and which have been subscribed for by Class A Members utilizing funds classified as “capital gains,” pursuant to the Opportunity Zone Program.

(g) “Class B Interests” means any Membership Interest denominated “Class B” hereunder, including all of the rights of a Class B Member in the Company, expressed as a percentage, including such Class B Member’s: (i) right to share in the profits and losses of the Company; (ii) right to inspect the Company’s books and records; (iii) the right to participate in the management of and vote on matters coming before the Class B Members, to the extent provided in this Agreement, and (iv) to the extent permitted under this Agreement, the right to act as an agent of the Company and which have been subscribed for by Class B Members utilizing funds classified as “capital gains,” pursuant to the Opportunity Zone Program.

(h) “Class A Member” means any Member of record holding and to the extent it holds Class A Interests.

(i) “Class B Member” means any Member of record holding and to the extent it holds Class B Interests.

(j) “Class C Interests” means any Membership Interest denominated “Class C” hereunder, including all of the rights of a Class C Member in the Company, expressed as a percentage, including such Class C Member’s: (i) right to share in the profits and losses of the Company; (ii) right to inspect the Company’s books and records; (iii) the right to participate in the management of and vote on matters coming before the Class C Members, to the extent provided in this Agreement, and (iv) to the extent permitted under this Agreement, the right to act as an agent of the Company and which have not been subscribed for with funds classified as capital gains. Only the Managing Member shall be eligible to hold the Class C Interests.

(k) “Class C Member” means any Member of record holding and to the extent it holds Class C Interests. The Managing Member shall hold the Class C Interests and may also be referred to herein as the Class C Member.

(l) “Depreciation” shall mean for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the depreciation, amortization or other cost recovery deduction for income tax purposes for such Fiscal Year bears



to such beginning adjusted tax basis; provided, however, that if the adjusted basis for income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

(m) “Distributable Cash” with respect to any period, shall mean cash flow from all sources in excess of working capital requirements and all costs and expenses of the Company, and Reserves (including Reserves for amounts that will be invested and/or reinvested into the Project), and otherwise not restricted from distribution to the Members, as are reasonably determined by the Managing Member.

(n) “First Closing Date” shall mean the first date that the Membership Interests are issued by the Company and Members are admitted as Members, which shall be the date that, as determined by the Managing Member, the Company has received binding subscriptions (such as cash investments) for the purchase of Membership Interests in an amount not less than Ten Thousand Dollars (\$10,000) or such other amount determined by the Managing Member.

(o) “Gross Asset Value” shall mean, with respect to any asset, the asset’s adjusted basis for Federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Managing Member;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member as of the following times: (A) the acquisition of an additional interest in the Company by any Member in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and (D) immediately prior to the issuance by the Company of a non-compensatory option (as defined in Treasury Regulations Section 1.761-3(b)(2)), other than an option to acquire a de minimis interest in the Company; and (E) immediately prior to the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of being a Member; provided, however, that adjustments pursuant to clauses (A) and (B) shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution or other applicable date, in each case, as determined by the Managing Member; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and ARTICLE X hereof; provided, however, that Gross Asset Values shall not be adjusted to the extent the Managing Member determines that an adjustment pursuant to subparagraph (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph. If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (i), (ii) or (iii) of this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profit and Net Losses.

(p) “Liquidators” shall mean: (i) the Managing Member or, if there is no Managing Member at the applicable time; (ii) the Person or Persons previously designated in writing by the Managing Member and notified to the Company’s auditors; or (iii) if the Managing Member has not made such a designation, the Person or Persons designated by a Majority Vote of the Members. For purposes hereof, the term “Liquidators” shall also include the trustees, receivers or other Persons required by law to wind up the affairs of the Company.

(q) “Majority Vote” shall mean a vote of the Class A Members and Class B Members at a duly convened meeting or by written consent in lieu thereof, owning more than fifty percent (50%) of the aggregate Capital Commitments in respect of the Membership Interests.

(r) “Managing Member” shall mean, BLM Manager, LLC, a New York limited liability company.

(s) “Member” shall mean any and all of the Members.

(t) “Membership Interest” shall mean (i) the Class A Interests; (ii) the Class B Interests; (iii) the Class C Interests; and (iv) with respect to the Managing Member, the Managing Member’s rights, and obligations as a manager in the Company under the Act, including all rights and obligations under the terms and conditions of this Agreement. The Company may issue fractional Membership Interests.

(u) “Net Profit and Net Loss” shall mean, for any Fiscal Year or such other period as determined by the Managing Member, the net income or net loss of the Company for such Fiscal Quarter or such other period, as the case may be, determined in accordance with Section 703(a) of the Code, including any items that are separately stated for purposes of Section 702(a) of the Code, as determined in accordance with federal income tax accounting principles, with the following adjustments:

(i) any income of the Company that is exempt from Federal income tax shall be included as income;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) shall be treated as current expenses;

(iii) except as otherwise provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code which may be made by the Company, provided that the amounts of any adjustments to the adjusted bases of the assets of the Company, made pursuant to Section 734 of the Code as a result of the distribution of property by the Company to a Member (to the extent that such adjustments have not previously been reflected in the Members' Capital Accounts) shall be reflected in the Capital Accounts of the Members in the manner and subject to the limitations prescribed in Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4);

(iv) any income, gain or loss attributable to the taxable disposition of any Company property shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Gross Asset Value with respect to such property as of such date;

(v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year;

(vi) in the event the Gross Asset Value of any Company asset is adjusted pursuant to its definition, the amount of any such adjustment shall be taken into account as gain or loss from the disposition of such asset, as specified in the definition; and

(vii) any amounts that are specially allocated under Section 10.04 shall not be taken into account.

(v) "Partnership Nonrecourse Debt" has the meaning given the term "nonrecourse liability" in Treasury Regulations Section 1.752-1(a)(2).

(w) "Person" shall mean any individual, association, corporation, general partnership, individual, limited Company, limited liability company, joint stock association, joint venture, trust, business trust, cooperative and any foreign association of like structure.

(x) "Preferred Return" shall mean, (i) with respect to each holder of Class A Interests, a one-time, non-annual, non-compounding **amount equal to 15%** multiplied by such holder's total Capital Contributions and (ii) with respect to each holder of Class B Interests, a one-time, non-annual, non-compounding **amount equal to 10%** multiplied by such holder's total Capital Contributions.

(y) "Remaining Capital Commitment" shall mean, in respect of any Member on the date of determination, an amount equal to the following: (i) the amount of such Member's Capital Commitment as of such date; (ii) minus the aggregate amount of such Member's Capital Contributions to the Company as of such date, as adjusted as contemplated hereby, and (iii) plus the aggregate amount of distributions to such Member pursuant to Section 10.7. For the purposes

of the foregoing, any Substitute Member shall have applied the Capital Commitment, Capital Contributions and distributions on account and with respect to the Membership Interests so transferred or assigned.

(z) “Required Expenditures” shall mean all expenditures or amounts required to be expended, whether or not of a recurring nature, that are necessary to operate, maintain, preserve or protect the existing Projects of the Company, including, without limitation, real estate taxes, operating deficits, insurance payments, costs of restoring the assets of the Company after a casualty or condemnation thereof, costs of compliance with law, payments with respect to mortgages and other liens, and payments on or of contractual obligations of the Company.

(aa) “Reserves” shall mean the amount of the reserves determined from time to time by the Managing Member for the payment of Organizational Expenses, Operating Expenses (including Required Expenditures) and other liabilities and general contingencies of the Company as well as for any required tax withholdings, even if such reserves are not consistent with maintaining the books on a tax basis.

(bb) “Seventy-Five Percent Vote” shall mean a joint vote of the Class A Members and Class B Members at a duly convened meeting or by written consent in lieu thereof, owning more than seventy-five percent (75%) of the aggregate Capital Commitments in respect of the Membership Interests.

(cc) “Subscription Documents” shall mean the subscription agreement, investor questionnaire and other documents executed and delivered by a Person in connection with its subscription or purchase of Class A Interests or Class B Interests in the Company and/or its admission as a Member of the Company.

(dd) “Tax Distribution Amount” means, with respect to any Member for any Fiscal Year, an amount equal to (i) the highest combined marginal federal, state and local tax rate then applicable to a Member, taking into account the character of such income or gain and any previously allocated taxable losses, deduction or expense that may offset later taxable income or gain, multiplied by (ii) the amount of taxable income or gain (as determined for federal income tax purposes) allocated to such Member for such Fiscal Year in accordance with Article X.

(ee) “Transfer” or “Transferred” with respect to a Membership Interest, shall mean any sale, transfer, assignment, exchange, hypothecation, pledge, or other disposition of a Membership Interest, including without limitation, any such transfer or assignment by will, intestate succession or operation of law.

(ff) “Unpaid Preferred Return” means, with respect to each holder of Class A Interests or Class B Interests, an amount (but not less than zero) equal to: (a) the Preferred Return on such Class A Interests or Class B Interests, reduced by (b) the aggregate amount of Distributions to such holder under Section 10.7.(b)(ii).

(gg) “Unreturned Capital” means, with respect to each holder of Membership Interests, an amount (but not less than zero) equal to: (a) the aggregate amount of the Capital Contributions made by such Person, reduced by (b) the aggregate amount of Distributions to such Person under Section 10.7(b)(i).

Section 2.2 Other Definitions. The following terms are defined in the Sections indicated:

<u>Term</u>	<u>Section</u>
“Act”	1.1
“Additional Member”	9.1(a)(i)
“Additional Member’s Pro Rata Contribution”	9.1(b)
“Additional Period”	1.6
“Agreement”	Preamble
“Authorized Representative”	12.3(a)
“Capital Account”	10.1
“Certificate”	1.1
“Code”	4.2(h)
“Company”	Preamble
“Covered Person”	4.5(a)
“Crowdfunding Offering”	1.3(d)
“Final Closing”	9.1(a)(i)
“First Additional Period”	1.6
“Fiscal Quarter”	1.5
“Fiscal Year”	1.5
“Funding Date”	9.1(c)
“Initial Members”	Preamble
“Initial Period”	2.1(n)
“Initial Project”	1.3(b)
“Initial Term”	1.6

“Investment Company Act”	11.1(c)(iv)
“Investment Guidelines”	1.3
“Members” or “Member”	Preamble
“Management Fee”	8.1(a)
“Operating Expenses”	8.2(b)
“Organizational Expenses”	8.2(a)
“Member Nonrecourse Debt”	10.4(b)
“Member Nonrecourse Debt Minimum Gain”	10.04(b)
“Next Offering”	1.3(d)
“Project”	1.3
“Side Letter”	15.8
“Special Attorney”	13.1
“Subsequent Closing”	9.1(a)(i)
“Substitute Member”	11.2(a)
“Tax Advance”	10.7(d)
“Partnership Representative”	10.12(d)
“Withheld Amount”	10.8(b)

### **ARTICLE III**

#### **MEMBERS**

Section 3.1 Names of the Members. The names and addresses of the Members shall be maintained in a register maintained by the Managing Member and shall be kept on file at all times at the principal office of the Company. BLM Manager, LLC, a New York limited liability company, is the sole Managing Member of the Company. The names and addresses of the Managing Member and of each of the Members (with the Class A Members, Class B Members and Class C Members listed separately) shall be set forth in a confidential schedule to this Agreement or otherwise set forth in the books and records of the Company and shall be kept on file at all times at the principal office of the Company.

Section 3.2 Admission of Members. Additional Members may be admitted to the Company at other times as provided in ARTICLE IX. In connection with the admission of a Member to the Company, such Member shall, in advance of such admission and as a condition thereto, sign the Operating Agreement signature page located at the end of this Agreement, and such other documents, agreements and instruments as shall be determined as necessary or desirable by the Managing Member. Unless admitted to the Company as a Member, as provided in this Agreement, no Person shall be considered a Member.

Section 3.3 Limitation of Liability.

(a) Each Member's liability shall be limited as set forth in this Agreement, the Act and other applicable law. A Member shall not be personally liable for any indebtedness, liability or obligation of the Company, except that such Member shall remain personally liable for the payment of the Capital Contribution of such Member and as otherwise set forth in this Agreement, the Act and any other applicable law.

(b) If, notwithstanding the terms of this Agreement, it is determined under applicable law that any Member has received a distribution which is required to be returned to or for the account of the Company or the Company's creditors, then the obligation under applicable law of any Member to return all or any part of a distribution made to such Member shall be the obligation of such Member and not of any other Member.

Section 3.4 Financial Adjustments. No Members admitted after the date of this Agreement shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Members may, in their discretion, at the time a new Member is admitted, close the books and records of the Company (as though the Fiscal Year had ended) or make pro rata allocations of loss, income and expense deductions to such Member for that portion of the Fiscal Year in which such Member was admitted in accordance with the provisions of the Code.

**ARTICLE IV**  
**MANAGEMENT**

Section 4.1 Management of Company.

(a) The business and affairs of the Company shall be managed exclusively by the Managing Member. BLM Manager, LLC shall be the initial Managing Member of the Company. The Company shall be managed by one Managing Member.

(b) None of the Members shall take any part in the management or control of the Company's business and shall have no authority to act on behalf of or to bind the Company. A substitute Managing Member may be admitted to the Company as provided in ARTICLE VI.

(c) The Managing Member shall be responsible for all management and decision-making matters with respect to the Company, including overseeing the Company's day-to-day operations and affairs.

Section 4.2 Powers of the Managing Member. Without in any way intending to limit the powers of the Managing Member, subject to the provisions of Section 4.6, the Managing Member shall have the right, power, and authority on behalf of the Company:

(a) As provided in Section 4.1, to allocate all of the assets of the Company among Projects to be selected by the Managing Member in its sole and absolute discretion, including, but not limited to the right to:

(i) purchase, hold, and sell the investments of the Company, including the Initial Project;

(ii) maintain accounts with brokers, administrators or custodians, pledge securities or other assets for loans (or to secure any other obligation of the Company) and, in connection with any such pledge, effect borrowings from brokers or banks in such amounts as may be determined from time to time;

(iii) transact business through brokers and dealers and other Persons selected by the Managing Member in its sole discretion, and in selecting such brokers, dealers and other Persons, and determining the compensation payable to such Persons, to take into account, among other things, the value of any research and brokerage services and other products and/or services provided by such persons to the Managing Member and/or the Company; and

(iv) take any other actions contemplated herein on behalf of the Company.

(b) To execute and perform any and all agreements, contracts, leases, documents, certifications and instruments necessary or convenient for the efficient conduct and operation of the Company's business and to amend any such agreements, contracts, documents, certifications and instruments, except as expressly limited by this Agreement;

(c) To acquire and enter into any contract of insurance, including directors' and officers' and errors and omissions policies;

(d) To provide services in originating or acquiring, servicing and managing the Projects, in each case, consistent with the terms contemplated by this Agreement;

(e) To file, conduct and defend legal proceedings of any form, including proceedings against Members, and to compromise and settle any such proceedings, or any claims against any persons, including claims against Members, on whatever terms deemed appropriate by the Managing Member;

(f) To borrow money, incur obligations as an account party on letters of credit and similar instruments, and guarantee the indebtedness of other Persons, and secure the repayment, reimbursement, guarantee, and other such obligations, in whole or in part, with a pledge of any assets of the Company (including, without limitation, the Capital Commitments and the Company's and the Managing Member's rights under this Agreement to, among other things, receive Capital Contributions and enforce all available remedies against Members that fail to make



such Capital Contributions), in each case, on such terms as the Managing Member shall determine in its discretion; provided, that the proceeds of such indebtedness shall be used in connection with the business of the Company;

(g) To provide advances to the Managing Member as contemplated in Section 10.7(d);

(h) To make any and all elections and handle other matters under the U.S. Internal Revenue Code of 1986, as amended (the “Code”), or any similar provision under the tax laws of any other jurisdiction, including any of the elections referred to in Section 754 of the Code;

(i) To engage independent accountants, attorneys, investment Managing Members, sub-advisers, broker-dealers, administrators, custodians, and such other Persons as the Managing Member may deem necessary or advisable;

(j) To establish and maintain for the conduct of Company affairs one or more offices and in connection therewith rent or acquire office space, engage personnel, whether part time or full time, and do such other acts and incur such expenses as the Managing Member may deem necessary or advisable in connection with maintenance or administration of such office;

(k) To require a provision in all Company contracts that none of the Members shall have any personal liability therefor, but that the Person contracting with the Company is to look solely to the Company and its assets for satisfaction;

(l) To purchase and sell Company assets at such price or amount for cash, securities or other property and upon such terms as are deemed, in the Managing Member’s absolute discretion, to be in the best interests of the Company;

(m) To prepare, or cause to be prepared, to execute, acknowledge and deliver any and all instruments to effectuate the business of the Company, including, but not limited to, annual and/or interim reports, a copy of which shall be delivered to each Member, as provided in herein;

(n) To establish such reserves as the Managing Member shall deem appropriate to pay current and future, definite, contingent and possible obligations of the Company;

(o) To incur other debt or use non-equity financial structures to increase or leverage the Company’s assets, including, without limitation, through REMICs, sale of interests in securitization vehicles, debt financings of the Company, “mezzanine” debt and/or equity financing that may be accomplished by the Company transferring assets to a subsidiary and then selling or financing the interests in such subsidiary, in whole or in part; provided, that the proceeds of such debt or non-equity financial structures shall be used in connection with the business of the Company; and

(p) To conduct any Crowdfunding Offering or other offering of Membership Interests in a manner consistent with the terms hereof.

Section 4.3 Actions of Managing Member. The Managing Member is authorized, directed, and empowered to act individually on behalf of the Company and, in accordance herewith, to execute all documents and instruments on behalf of the Company. Third parties may rely on execution of any documents on behalf of the Company by the Managing Member.

Section 4.4 Limited Liability and Indemnification of the Managing Member.

(a) Neither the Managing Member nor any of its respective officers, directors, Managing Members, shareholders, partners, members and employees, agents, consultants, other authorized persons, other Persons acting in any similar capacity (each, a “Covered Person”) shall be liable to the Company or any of the Members for any action taken or omitted to be taken in connection with the business or affairs of the Company so long as such Covered Person acted in good faith and is not found to be guilty of fraud, material violation of law or commission of a felony related to the business and affairs of the Company, willful violation of this Agreement, gross negligence or willful misconduct by a final non-appealable judgment of a court of competent jurisdiction. It shall be conclusively presumed and established that such Covered Person acted in good faith if any action is taken, or not taken, by it on reasonable reliance on the advice of legal counsel or other independent outside consultants.

(b) The Company agrees to indemnify and hold harmless each Covered Person from and against any and all claims, actions, demands, losses, costs, expenses (including attorneys’ fees and other expenses of litigation), damages, penalties or interest, as a result of any claim or legal proceeding related to any action taken or omitted to be taken in connection with the business and affairs of the Company (including the settlement of any such claim or legal proceeding); provided, however, that the Covered Person against whom the claim is made or legal proceeding is directed is not determined to be guilty of fraud, material violation of law or commission of a felony related to the business and affairs of the Company, willful violation of this Agreement, gross negligence or willful misconduct by a final non-appealable judgment of a court of competent jurisdiction. Any indemnity under this Section 4.5 shall be paid from and to the extent of Company assets only, and only to the extent that such indemnity does not violate applicable laws. Notwithstanding the foregoing, the Company can purchase insurance policies to cover the costs of the indemnification obligations hereunder. The Company shall advance the costs and expenses with respect to any such claim, action or demand that are incurred by any Covered Person to the fullest extent permitted by applicable law, subject to an undertaking by such Covered Person to reimburse the Company in the event such reimbursement is required under applicable law or in the event that the Covered Person is not entitled to indemnification under this Section 4.5(b).

Section 4.5 Restrictions.

(a) The Managing Member shall not do any act, whether of omission or commission, that would make it impossible to carry on the normal business of the Company other than any act required by the Members or to dissolve and terminate the Company in accordance with Section 14.1.

(b) The Managing Member shall not perform any act in contravention of this Agreement or applicable law.

(c) The Managing Member shall not permit the Company to use leverage in excess of 80% of the Assets Under Management of the Company unless such leverage ratio is approved by the Members.

Section 4.6 No Prohibition Against Other Business Ventures. Each Member acknowledges and agrees that the Managing Member and each of its respective heirs, trustees, executors, administrators, or affiliates, may:

(a) directly or indirectly, engage and hold interests in other investments or business ventures of any kind and description for their own account including, without limitation, other investment entities similar to the Company, whether such business ventures are in direct or indirect competition with the Company and whether the Company or any of the Members also has an interest therein, without having to account to the Company or any Member for any profits or other benefits derived therefrom and without incurring any obligation to offer any interest in any such activity to the Company or any Member; (b) provide investment advice to other parties and may manage other accounts and private investment vehicles, including any such that are similar to the Company;

(b) buy or sell securities for their own accounts or for the accounts of affiliates, including the same securities as are purchased, sold, or held by the Company; or

(c) co-invest in any or all of the Projects on a side-by-side basis with the Company, subject to applicable legal, tax or regulatory considerations, and neither the Company nor any of its Members shall have any rights in such investments or business ventures.

(d) The Managing Member shall not be required to devote its full time to the business of the Company but shall devote so much of its time and efforts to the affairs of the Company as may in its judgment be necessary to accomplish their contribution to the purposes of the Company.

Section 4.7 Duty to Keep Books, Financial and Tax Reports.

(a) At all times during the existence of the Company, the Managing Member shall keep true and complete records and books of account. The Managing Member has the power and authority to delegate some or all of the administrative bookkeeping functions relating to the Company to an administrator or agent, which may be the Company's accountants. Upon reasonable advance written notice, which shall not be less than five (5) business days, a Member may inspect and copy, at the Member's expense and solely for a purpose reasonably related to the Member's interest as a Member, any records of the Company required to be maintained pursuant to the Act and any financial statements maintained by the Company. Any such inspection must (i) unless otherwise agreed to by the Managing Member, take place at the Managing Member's principal place of business, (ii) be in good faith without any intent to damage the Company or any of its Members or Affiliates in any manner and (iii) be undertaken in a manner reasonably intended to avoid any disruption to the business and/or operations of the Managing Member and the Company.

(b) The Managing Member shall:

(i) take commercially reasonable efforts to cause to be prepared and distributed to each Member annual unaudited financial statements prepared by the Company's independent accountant no later than April 30 of each year; and

(ii) at the discretion of the Manager, prepare and distribute a quarterly unaudited balance sheet, income statement and a statement of cash flows for the quarter then ended for the first three quarters of the Fiscal Year, which may include a summary of the status of the Project during such quarterly period, within forty-five (45) days after the end of each fiscal quarter.

(c) The Managing Member shall also have prepared and filed all applicable income, franchise, gross receipts, payroll and other tax returns that the Company is obligated to file. Copies of Schedule K-1 of the Company's Tax Return (Form 1065) shall be distributed to all Members as soon as practicable after the Company's Fiscal Year.

(d) The Managing Member may, at its discretion, agree to provide certain Members with additional information on the underlying Projects.

Section 4.8 Annual Meetings. The Managing Member may hold an annual meeting that will provide the Members with the opportunity to review and discuss the Company's investment activities. The Company will not reimburse any Member for any cost of attending any annual meeting.

Section 4.9 Delegation of Power. At all times during the existence of the Company, the Managing Member has the power and authority to delegate some or all of its obligations and responsibilities hereunder to one or more officers or third parties as it may select from time to time in the exercise of its reasonable discretion.

Section 4.10 Guarantees. It is acknowledged and agreed that in no event will the Managing Member be required to provide any bond, guaranty or other credit enhancement or accommodation, including any limited or springing recourse guaranty, environmental indemnity or completion guarantees in connection with the underwriting, origination, acquisition, development, or management of any Projects or otherwise. If and to the extent the Managing Member provides any bond, guaranty or other credit enhancement or accommodation, then the Company shall promptly upon demand indemnify the Managing Member for any expenses and loss incurred in connection with such bond, guaranty, credit enhancement or accommodation. To the extent that a claim for indemnification pursuant to this Section 4.11 is unenforceable or otherwise not permitted under a separate contract or other instrument facilitating the business of the Company, the Managing Member shall be reimbursed by the Company, promptly upon demand, for any expenses and losses incurred in connection with such bond, guaranty, credit enhancement or accommodation.

Section 4.11 Company Financing. The Managing Member shall have the right, at its option, to cause the Company to obtain financing from any Person, or guaranty the obligations of other Persons, to consummate the purchase of, or originate, Projects and to pay Organizational Expenses and Operating Expenses, including to provide interim financing to the extent necessary prior to the receipt of Capital Contributions from Members. Without limiting the terms of the

preceding sentence, the Managing Member shall have the right, at its option, to pledge the obligations of the Members to make Capital Contributions for the benefit of one or more lenders or other Persons extending credit to the Company as further described in Section 4.2(f). Each Member hereby acknowledges its obligations pursuant to this Agreement to make Capital Contributions in accordance with this Agreement, and agrees that the Managing Member, or the lender on behalf of the Managing Member, if the Company is in default of its payment obligations (in accordance with the agreements between such lender and the Company and/or the Managing Member), may call such Capital Contributions in accordance with this Agreement to pay the outstanding obligations to such lenders without defense, counterclaim or offset of any kind, and may enforce all available remedies against Members that fail to make such Capital Contributions pursuant to the terms of this Agreement; provided that the liability of such Members to make Capital Contributions shall not be increased thereby and provided, further, that any Capital Contributions pursuant to this Agreement may be required to be made to an account which may be pledged to a lender as security.

## **ARTICLE V** **INVESTMENTS**

Section 5.1 General. The Managing Member shall identify and evaluate investment opportunities for the Company and shall determine whether the Company should invest in such opportunities. The Managing Member shall affect the Company's investment in and disposition of each Project.

### Section 5.2 Investment Limitations.

(a) The Company shall make investments which, in the sole judgment of the Managing Member, at the time made, are appropriate investments for the Company and may make other temporary or short-term investments. The Managing Member may, in its sole discretion, determine that a Project will be undertaken in connection with an investment or co-investment by one or more Persons, including without limitation, one or more Members determined in good faith by the Managing Member, on terms and conditions determined by the Managing Member, in its sole discretion.

Section 5.3 Investments with Others. The Company may, as determined by the Managing Member, acquire any of its investments indirectly through one or more Persons, including any passive or controlling interest in any entity that is not wholly owned by the Company. Such entities may include, without limitation, any shared investment vehicles, or joint ventures with other Persons, including any Member.

Section 5.4 Valuation of Investments. The investments of the Company shall be valued in accordance with tax basis reporting or other comprehensive basis of accounting as determined by the Managing Member. In valuing any investment of the Company, the Managing Member may reasonably rely on investment consultants, appraisers, and other professionals.

**ARTICLE VI**  
**RESIGNATION OF MANAGING MEMBER**

Section 6.1 Resignation of the Managing Member. The Managing Member of the Company may resign at any time by giving written notice to the Members. The resignation of a Managing Member shall take effect upon receipt of notice thereof by the Members or at such later date specified in such notice. Notwithstanding any resignation, the Company shall at all times have at least one party designated and serving as the Managing Member. The resignation of a Member as a Managing Member shall not affect such Member's rights or status as a Member.

Section 6.2 Appointment of Substitute Managing Member. In the event of a resignation of the Managing Member as the Managing Member of the Company as set forth in Section 6.1, the Members shall have the right, within ninety (90) days after such event, by an affirmative Seventy-Five Percent Vote of the Members, to appoint a substitute Managing Member.

Section 6.3 Duties of Substitute Managing Member. Any successor to such office of Managing Member shall assume the status of and shall have all of the rights, powers and obligations that the Managing Member possessed prior to its resignation as the Managing Member of the Company.

**ARTICLE VII**  
**STATUS, RIGHTS, POWERS AND VOTING RIGHTS OF MEMBERS**

Section 7.1 Limited Liability. No Member, by virtue of being a Member, shall participate in or have any control over the management of the Company's business. The Members hereby consent to the exercise by the Managing Member of the powers conferred upon the Managing Member by this Agreement. The Members shall not have any authority or right to act for or bind the Company. Notwithstanding anything to the contrary contained herein, in no event shall a Member be considered a Managing Member of the Company by agreement, estoppel, as a result of the performance of its duties, or otherwise. Notwithstanding anything to the contrary contained herein, the Members shall not be deemed to be participating in the control of the business of the Company within the meaning of the Act as a result of any actions taken hereunder by a Member. No Member, Substitute Member or Additional Member shall be personally liable or bound for the expenses, liabilities, or obligations of the Company beyond the amount of such Member's Remaining Capital Commitments.

Section 7.2 Capital Contributions.

(a) No Member shall be entitled to a return of such Member's Capital Contributions or any portion thereof and no time has been agreed upon for the return of any Member's Capital Contribution, except as provided in this Agreement.

(b) If any Member receives a return of all or any part of such Member's Capital Contribution, whether pursuant to Section 10.7 or otherwise, such Member may be liable to the Company for an amount equal to such distribution to the extent provided for in the Act if at the time of such distribution, the Member knew the Company was prohibited from making such distributions under the Act.

(c) The payment or distribution of any such money or other property to a Member shall be deemed to be a compromise within the meaning of Section 17-502(b) of the Act and, except as otherwise expressly provided herein (including, without limitation, the increase of the Remaining Capital Commitment caused by such distribution) and by applicable law, the Member receiving any such money or property shall not be required to return any such money or property to the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member only.

Section 7.3 Liability of Member. No Member shall be obligated to provide any contributions to the Company in excess of the Remaining Capital Commitment of such Member. No Member shall be obligated to make any loan to the Company.

Section 7.4 No Restriction on Other Activities. Each of the Members may engage and hold interests in business ventures of every kind and description for their own accounts including, without limitation, business ventures which are, directly or indirectly, in competition with the Company and whether the Company or any of the Members also has an interest therein. Neither the Company nor any of the Members shall have any rights in such independent business ventures by virtue of this Agreement.

Section 7.5 Voting Rights. Each Member shall only have those voting rights and privileges which are explicitly granted pursuant to the terms of this Agreement and applicable law, and only with respect to the Membership Interests held by such Member. Unless otherwise provided in this Agreement, the Majority Vote of the Members shall be required at any meeting of the Members, or by written consent in lieu thereof, to approve any transaction or matter proposed to the Members for their consent or approval. A meeting of the Members may be called by the Managing Member upon at least five (5) days' prior written notice thereof mailed or otherwise delivered to the Members, which notice shall state the date, time, place, and purpose of such meeting, provided that such date may not be more than sixty (60) days after the date of such written notice. A meeting of Members shall also be called by the Managing Member upon written request of or demand by Members holding thirty percent (30%) or more of the aggregate Capital Commitments in respect of the Membership Interests on the date determined by the Managing Member that is not earlier than ten (10) days nor later than twenty (20) days after such request or demand for the purpose specified by such Members delivering such request or demand. A Member may vote in person or by proxy in form and substance reasonably acceptable to the Managing Member. Any Member that attends any such meeting other than to protest the notice thereof, shall be deemed to have waived notice of such meeting. Each Person that is a Member on the date of notice of a meeting of the Members shall be entitled to vote at such meeting.

Section 7.6 Removal of the Managing Member. In the event of either (i) the Managing Member's gross negligence or willful misconduct (as determined by a court or tribunal of final jurisdiction) that has a material adverse effect on the Company, or (ii) the Managing Member's bankruptcy or dissolution, the Class A Members and Class B Members holding a joint seventy-five percent (75%) or more of the aggregate Membership Interests in the Company may vote to remove the Managing Member and either appoint a new managing member or dissolve the Company. In any such event, the Managing Member shall retain its Class C Interest in the Company, and the Managing Member shall continue to be entitled to the same distributions it

otherwise would have been entitled to receive with respect to its Membership Interest in the Company as of the date of its removal as the Managing Member of the Company.

Section 7.7 Rights as to Dissolution. The Members shall have no right or power to cause the dissolution and winding up of the Company by court decree or otherwise, except as set forth in this Agreement.

Section 7.8 Consent by Members in Lieu of Meeting. Any action required by this Agreement or the Act to be taken at any regular or special meeting of the Members or any Members, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted.

## **ARTICLE VIII** **FEES AND EXPENSES**

Section 8.1 Management Fee. The Managing Member shall receive an annual management fee: 5% of the of capital raised or \$60,000 per year, whichever is greater from the Company with respect to its services as Managing Member (Fund Manager).

Section 8.2 Expenses.

(a) Organizational Expenses. The Company shall, as allocated by the Managing Member, pay or reimburse the Managing Member for all expenses relating to organizing the Company including, but not limited to, initial offering expenses, legal and accounting fees, marketing expenses, consulting fees, printing and mailing expenses, government filing fees, any placement or broker or similar fees incurred in connection with the offering of the Membership Interests and structuring fees incurred by the Company or the Managing Member in connection with the organization of the Company (including the formation of such entities) and the offering and closings of the purchase of Membership Interests in the Company (collectively, “Organizational Expenses”), up to an aggregate maximum amount of One Hundred Fifty Thousand Dollars (\$150,000).

(b) Operating Expenses. The Company shall, as allocated by the Managing Member, pay, or reimburse the Managing Member for all expenses related to, or arising out of, the operation of the Company including, but not limited to: Required Expenditures, third-party fees and expenses (including consultancy fees and commissions on transactions); legal fees; marketing expenses; accounting fees; any taxes imposed on the Company; all costs and expenses related to the sourcing, evaluation, development, negotiation, acquisition, implementation, ownership, disposition or financing of any potential or actual investment, including related travel expenses (whether or not the potential investment is made or acquired by the Company); administrator and administrative fees and expenses; meeting costs; insurance (including liability insurance and other coverages for the benefit of the Company, the Managing Member and their respective personnel); the costs and expenses of any litigation (including fees and disbursements of counsel) involving the Company and the amount of any judgments or settlements paid in connection therewith; and any other extraordinary expenses attributable to the business of the Company (collectively,



“Operating Expenses”). The Managing Member, in its sole discretion, may from time to time pay for any of the foregoing Organizational Expenses and/or Operating Expenses or waive their right to reimbursement for any such expenses, as well as terminate any such voluntary payment or waiver of reimbursement. Any waiver by the Managing Member of its right to reimbursement for a particular expense payable by the Company shall not impair or operate as a waiver of the Managing Member’s right to reimbursement for such expense or any other expense in the future. In addition, where possible and appropriate, certain third-party fees, funding costs and other expenses may be charged to a Project.

(c) Allocation of Expenses. Where possible and appropriate, Operating Expenses incurred for the benefit of the Company shall be allocated to and paid by the Company on the basis, determined by the Managing Member in good faith.

## **ARTICLE IX**

### **CAPITAL CONTRIBUTIONS; CAPITAL COMMITMENTS**

#### Section 9.1 Capital Contributions and Commitments.

(a) Each Member shall make Capital Contributions to the Company up to the aggregate amount of such Member’s Remaining Capital Commitment. Each Member will be required to make a minimum Capital Contribution equal to the remaining amount of their respective Capital Commitment noted in the Subscription Document of such Member, except to the extent that such minimum is waived or reduced by the Managing Member.

(b) Each Class A Member and Class B Member shall be required to make an initial Capital Contribution of an amount that is no less than ten thousand dollars (\$10,000.00); provided, however, that the Managing Member may waive this requirement in its sole discretion.

#### Section 9.2 Additional Members.

##### (a) Additional Closings.

(i) In addition to the admission of the Initial Members on the First Closing Date, the Managing Member may, without the consent of the then Members, schedule one or more additional closings (each, a “Subsequent Closing”) for such Persons seeking admission to the Company, or existing Members seeking to make additional Capital Commitments (the last such closing, the “Final Closing”) (any of which, an “Additional Member”), subject to the determination by the Managing Member in the exercise of its good faith judgment that the following conditions have been satisfied: (y) each such Person shall have executed and delivered a counterpart to the Subscription Documents and the Operating Agreement signature page located at the end of this Agreement, pursuant to which such Person agrees to be bound by the terms and provisions of this Agreement and the Subscription Documents and such other documents as the Managing Member may require; and (z) such admission would not result in a violation of any applicable law, including U.S. securities laws, or any term or condition of this Agreement.

(ii) In connection with an additional Capital Commitment by an existing Member, the Managing Member may establish a new Capital Account to which such Capital Commitment and Capital Contributions shall be credited, and which shall be maintained for the benefit of such Member separately from any existing Capital Account of such Member. Such separate Capital Account will be maintained for purposes of separately tracking additional Capital Commitments and Capital Contributions, distributions, and allocations with respect to any newly issued Membership Interests.

(b) Payment by Additional Members. At any time on or before the one year anniversary of the Final Closing, the Managing Member will send the Additional Member a notice (the “Notice of Additional Contribution”), and the Additional Member will pay to the Company an amount equal to (i) such Additional Member’s pro rata share (based on the ratio of its Capital Commitment to the total Capital Commitments) of all previously contributed amounts drawn for investments and payment of Organizational Expenses and Operating Expenses, and interest thereon at the rate of six percent (6%) per annum, if such Additional Member becomes a member less than six (6) months of the Final Closing and twelve percent (12%) per annum, if such Additional Member becomes a Member six (6) months or more after of the Final Closing. The additional six percent (6%) and twelve percent (12%) interest payable by an Additional Member is referred to herein collectively as the “Additional Member’s Pro Rata Contribution.” as applicable, it being the intent that Additional Member’s Pro Rata Contribution will be computed so that each Additional Member will be in the same position as if such Additional Member made its Capital Commitment as of and on the First Closing Date and was admitted as a Member on the First Closing Date. The Additional Member’s Pro Rata Contribution will not be actually distributed, but will be deemed to be, and treated for tax and accounting purposes as though, immediately distributed to the previously admitted Members in accordance with their unreturned Capital Contributions immediately before the admission of the Additional Member and re-contributed by such previously admitted Members to the Company at the time of such Subsequent Closing. Any existing Members who wish to increase their Capital Contributions after the anniversary of the Final Closing shall be subject to the same provisions with respect to such increased commitments as provided above for new Members admitted to the Company after the anniversary of the Final Closing.

(c) If a material change in the value of the assets of the Company occurs, the Managing Member may make adjustments to the amount to be contributed by an Additional Member to reflect such changes.

(d) The transactions contemplated by this Section 9.2 shall not require the consent of any of the Members. In furtherance, and not in limitation, of the foregoing, the admission of any Additional Member shall be affected upon the consent of the Managing Member and on the terms and conditions determined by the Managing Member and shall not require the consent of any Member. The date of admission of an Additional Member as a Member in the Company shall be the date specified by the Managing Member.

Section 9.3 Further Actions. To the extent necessary, the Managing Member shall cause the books and records of the Company to be amended to reflect as appropriate the occurrence of any of the transactions referred to in this ARTICLE IX or in ARTICLE XI as promptly as is practicable after such occurrence.

**ARTICLE X**  
**CAPITAL ACCOUNTS; ALLOCATIONS; DISTRIBUTIONS;**  
**WITHDRAWALS; TAXES**

Section 10.1 Capital Accounts. There shall be established and maintained on the books of the Company a separate capital account for each Member in accordance with Treasury Regulations Section 1.704-1(b) and with the definitions and methods of adjustment set forth in this Agreement (a “Capital Account”).

Section 10.2 Adjustments to Capital Accounts. As of the close of business of the last day of each Fiscal Year, the balance in each Member’s Capital Account shall be adjusted by: (a) increasing such balance by such Member’s (i) allocable share of Net Profit (allocated in accordance with this ARTICLE X) and (ii) Capital Contributions, if any, and (b) decreasing such balance by (x) the amount of cash and the value of securities or other property (net of liability) distributed to such Member during such Fiscal Year and (y) such Member’s allocable share of Net Loss (allocated in accordance with this ARTICLE X). Each Member’s Capital Account shall be further adjusted with respect to any special allocations pursuant to this ARTICLE X and as required by the Managing Member pursuant to Section 9.3.

Section 10.3 Allocation of Net Profits and Net Losses. For each Fiscal Year (or portion thereof) after giving effect to the special allocations set forth in Section 10.4, Net Profits and Net Losses for any taxable period shall be allocated among the Members in such manner that, as of the end of such applicable taxable period, each Member’s Capital Account will be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement, determined as if the Company were to liquidate all of the assets of the Company for an amount equal to their book values (as determined under Treasury Regulations Section 1.704-1 (b)(2)(iv)), all Company liabilities were satisfied (limited in respect of each nonrecourse liability to the book values of the assets securing such liability), and the Company distributed the proceeds of such liquidation in the manner described in Section 14.4(b)(iv). For purposes of calculating a Member’s Capital Account under this Section 10.3, any amounts such Member is obligated to restore (or deemed obligated to restore pursuant to the Treasury Regulations under Section 704(b) of the Code) will be deemed to increase such Member’s Capital Account balance.

Section 10.4 Special Allocations.

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in the Company’s “Company minimum gain” (as defined in Treasury Regulations Section 1.704-2(d)), items of income and gain shall be allocated to all Members in accordance with Treasury Regulations Section 1.704-2(f); such allocations are intended to comply with the minimum gain chargeback requirements of Treasury Regulations Section 1.704-2 and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4) and notwithstanding any other provision of this ARTICLE X to the contrary, if there is a net decrease in “member nonrecourse debt minimum gain” (as determined in accordance with Treasury Regulations Section 1.704-2(i)(4), “Member

Nonrecourse Debt Minimum Gain”) attributable to a “member nonrecourse debt” (as determined under Treasury Regulations Section 1.704-2(i)(5), “Member Nonrecourse Debt”) during any Fiscal Year, each Member who has a share of such Member Nonrecourse Debt Minimum Gain shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member’s share of the net decrease in such Member Nonrecourse Debt Minimum Gain. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section is intended to comply with the Member nonrecourse debt minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. No allocation may be made to a Member to the extent such allocation causes or increases a deficit balance in such Member’s Adjusted Capital Account. Notwithstanding any other provision of this Agreement to the contrary except paragraphs (a) and (b) of this Section 10.4, in the event that a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which results in such Member having or increasing a negative adjusted Capital Account balance (as determined above), then such Member shall be allocated items of income and gain in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such negative balance in such Member’s Adjusted Capital Account as quickly as possible. This provision is intended to satisfy the “qualified income offset” items of the Code.

(d) Risk of Loss Allocation. Any item of “member nonrecourse deduction” (as defined in Treasury Regulation Section 1.704-2(i)(2)) with respect to a “member nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Member or Members who bear the economic risk of loss for such Member Nonrecourse Debt in accordance with Treasury Regulations Section 1.704-2(i)(1).

(e) Allocation of Excess Nonrecourse Liabilities. For the purpose of determining each Member’s share of Company nonrecourse liabilities pursuant to Treasury Regulations Section 1.752-3(a)(3), and solely for such purpose, each Member’s interest in Company profits is hereby specified to be equal to the ratio (stated as a percentage) of their respective Capital Contributions to the Company.

(f) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this ARTICLE X have been made.

(g) Section 704(c) Allocation. Solely for federal, state, and local income tax purposes and not for book or Capital Account purposes, depreciation, amortization, gain, or loss

with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for federal income tax purposes shall be allocated in accordance with the principles and requirements of Code Section 704(c) and the Treasury Regulations promulgated thereunder, and in accordance with the requirements of the relevant provisions of the Treasury Regulations issued under Code Section 704(b). The Managing Member may use any method permitted pursuant to Treasury Regulations Section 1.704-3 for all allocations with respect to contributed property. For Capital Account purposes, depreciation, amortization, gain, or loss with respect to property that is properly reflected on the Company's books at a value that differs from its adjusted basis for tax purposes shall be determined in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv)(g).

(h) Transfers During The Taxable Year. All items of income, gain, loss and deductions allocable pursuant to ARTICLE X hereof for a Fiscal Year with respect to any Membership Interest which may have been transferred (if permitted pursuant to the terms hereof) during such year shall be allocable between the transferor and transferee using any reasonable method determined by the Managing Member; provided, that in all events that the method utilized shall be permitted under the Code and the applicable regulations promulgated under the Code.

Section 10.5 Negative Capital Accounts. Except as may be required by law, no Member shall be required to reimburse the Company for any negative balance in such Member's Capital Account, provided that each such Member shall remain fully liable to make contributions of capital to the extent of such Member's Capital Commitment.

Section 10.6 Tax Allocations. For Federal, state and local income tax purposes, the income, gains, losses, deductions and credits of the Company shall, for each taxable period, except as otherwise provided herein, be allocated among the Members in the same manner and in the same proportion as such items have been allocated to the Members pursuant to Section 10.3 and Section 10.4, except that if any such allocation for tax purposes is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, and deductions shall be allocated among the Members for tax purposes, to the extent permitted by the Code or other applicable law, so as to reflect as nearly as possible the allocation set forth in Section 10.3 and Section 10.4.

Section 10.7 Distributions.

(a) The Company shall distribute Distributable Cash arising from and related to each Project to the Members, as determined from time to time by the Managing Member in its sole discretion. All such distributions of Distributable Cash shall be paid to the Members as provided below in Section 10.7(b). The Company will be entitled to from time to time create appropriate Reserves, even if such reserves are not consistent with maintaining books on a tax basis, in amounts deemed necessary by the Managing Member. The Company shall make all such distributions only to the Persons who, according to the books and records of the Company, are the holders of record of the Membership Interests in respect of which such distributions are made on the actual date of distribution. If a Member owes money to the Company, the Company may deduct the amount owed by the Member from the amount of any distribution, and apply such deduction against the amount owed.

(b) Unless otherwise specified in this Agreement with respect to the Membership Interests, the following sets forth the amount and order of priority of Distributions by the Company of Distributable Cash to the Members:

(i) First, 100.0% to the Members, *pro rata* in proportion to their Unreturned Capital, if any, until the Unreturned Capital of each such holder is zero;

(ii) Second, 100.0% to the Class A Members and Class B Members, *pro rata* in proportion to their Unpaid Preferred Return, until the Unpaid Preferred Return of each such Member is zero; and

(iii) Third, 50% to the Class A Members and Class B Members, *pro rata* in proportion to their Class A Interests and Class B Interests, and 50% to the Class C Members, *pro rata* in proportion to their Class C Interests.

(c) Notwithstanding anything to the contrary in Section 10.7, the Company shall use commercially reasonable efforts to make Distributions of Distributable Cash to each Member in respect of each Fiscal Year pursuant to this Section 10.7(c) in an amount equal to the excess, if any, of (i) the Tax Distribution Amount of such Member for that Fiscal Year, over (ii) prior and, to the extent relevant, reasonably expected, distributions to such Member during or with respect to such Fiscal Year. The Company shall calculate the Tax Distribution Amount annually based on the Managing Member's good faith estimate of the Company's income for the Fiscal Year and shall use commercially reasonable efforts to make Distributions of the Tax Distribution Amount on or prior to April 15<sup>th</sup> of the year following each such Fiscal Year. Any distributions to a Member under this Section 10.7(c) shall be treated as an advance against, and shall reduce dollar-for-dollar, future distributions payable to such Member under Section 10.7(b) or Section 14.2(iv).

(d) To the extent aggregate distributions to the Managing Member with respect to any Fiscal Year are less than the amount of taxes payable with respect to taxable income and gain allocated to it with respect to the same Fiscal Year, the Managing Member may cause the Company to make a cash distribution to the Managing Member in an amount equal to the excess of such taxes over the distributions with respect to the same Fiscal Year (a "Tax Advance"). For this purpose taxes shall be calculated at a deemed tax rate equal to the highest marginal combined Federal, state and local income tax rate applicable to an individual taxpayer residing in New York, New York (or such other U.S. state or territory as determined by the Managing Member), then in effect under applicable laws, taking into account the character of the taxable income, gain, loss and deduction allocated to the Managing Member by the Company, but without taking into account any other tax attributes of the Managing Member or its members (the "Tax Advance Rate"). Tax Advances shall be treated as an advance against, and shall reduce dollar-for-dollar, future distributions payable to the Managing Member under Section 10.7(b) or Section 14.2(iv).

#### Section 10.8 Withholding Taxes.

(a) Notwithstanding the foregoing provisions, each Member hereby authorizes the Managing Member to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company (pursuant to the Code or any provision of any state, local or foreign tax law) with respect to such Member or as a result of such Member's participation in the

Company. Any such amount paid with funds of the Company shall be treated as an amount actually distributed to such Member. To the extent that the aggregate of such payments to a Member for any period exceeds the Distributions to which such Member is entitled for such period, the Managing Member shall notify such Member as to the amount of such excess and such Member shall make a prompt payment to the Company of such amount. The amount due from such Member under this Section 10.8(a) shall constitute recourse debt of such Member to the Company secured by the Member's Membership Interests and shall accrue interest at the rate of 10.0% per annum. The Company shall have the right to use subsequent distributions payable to the Member to satisfy the Member's obligations arising under such debt.

(b) If the Company makes a distribution and such distribution is subject to withholding or other taxes payable by the Company on behalf of any Member (the "Withheld Amount"), the Managing Member shall notify such Member as to the extent (if any) of the Withheld Amount paid by the Company and such Member shall make a prompt payment to the Company of such Withheld Amount. The amount due from such Member under this Section 10.8(b) shall constitute a recourse debt of such Member to the Company and shall accrue interest at the long term applicable federal rate.

(c) Any withholdings referred to in this Section 10.8 may be made at the maximum applicable statutory rate under the applicable tax law unless the Managing Member shall have received an opinion of counsel or other evidence satisfactory to the Managing Member to the effect that a lower rate is applicable or that no withholding is applicable.

(d) Each Member shall timely provide the Company such tax forms and information as are necessary or appropriate for the Company to comply with all applicable tax information reporting and withholding obligations, and cooperate with the Company in a reasonable manner, in order to avoid the imposition of any tax (including increase thereof), interest or penalties, that would result from such Member's failure to comply with this Section 10.8(d).

(e) Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company, each Covered Person and other Members against all claims, liabilities and expenses of whatever nature relating to such person's obligation to withhold and pay over, or otherwise pay, any withholding or other taxes (including an increase thereof) with respect to such Member or as a result of such Member's participation in the Company, including such Member's failure to comply with applicable tax internal reporting requirements.

Section 10.9 No Withdrawal of Capital. Except as otherwise expressly provided in this Agreement, no Member shall have the right to withdraw capital from the Company or to receive any distribution or return of such Member's Capital Contributions.

Section 10.10 Final Distribution. The final distributions following dissolution shall be made in accordance with the provisions of Section 14.2.

Section 10.11 Overriding Provision. Notwithstanding any other provision of this Agreement to the contrary, distributions shall be made only to the extent of available assets and in accordance with the Act.

Section 10.12 Taxes.

(a) The Company shall be operated in a manner consistent with that of a Company for Federal income tax purposes until such time as when the Managing Member determines that the Company's treatment as a Company for Federal income tax purposes is not in the best interest of the Company or the Members. The Members agree to the tax treatment of the Company as provided herein and shall not take any action inconsistent with such treatment.

(b) All matters concerning allocations for Federal, state, and local and foreign income tax purposes, including accounting procedures, not expressly provided for by the terms of this Agreement shall be equitably determined in good faith by the Managing Member.

(c) At the written request of any Member, the Managing Member may cause the Company to make the election under Section 754 of the Code.

(d) The Managing Member will be the "Partnership Representative" of the Company within the meaning of Code Section 6223(a), as enacted by the Bipartisan Budget Act of 2015, and the Company and the Members will complete any necessary actions (including signing and delivering any required certificates or other documents) to effectuate such designation. Each Member hereby consents to such designation and agrees that upon the request of the Partnership Representative, it will execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate for such consent. The Partnership Representative shall have the authority, duties and responsibilities as set forth in Code Section 6221 through 6241 and the Treasury Regulations thereunder (the "Partnership Audit Rules"). Notwithstanding anything to the contrary herein, the Partnership Representative shall not make any election, settlement or take any actions to settle or to litigate any adjustments set forth in a notice of final partnership adjustment under the Partnership Audit Rules without the consent of the Members. In the event that the Company becomes liable for any taxes, interest or penalties under Code Section 6225, (i) each Person that was a Member of the Company for the taxable year to which such liability relates shall indemnify, defend and hold harmless the Company for such Person's allocable share of the amount of such tax liability, including any interest and penalties associated therewith, (ii) the Company may cause the Members (including any former Member) to whom such liability relates to pay, and each such Member hereby agrees to pay, such amount to the Company, and such amount shall not be treated as a Capital Contribution, and (iii) without reduction to a Member's (or former Member's) obligations under this Section 10.12(d), any amount paid by the Company that is attributable to a Member and that is not paid by such Member pursuant to clause (ii) above, shall be treated for purposes of this Agreement as (A) a distribution to such Member for purposes of Section 10.7, and (B) a reduction to such Member's Capital Account balance. The Partnership Representative shall keep the Members informed as to any tax actions, examinations or proceedings relating to the Company. The Partnership Representative is authorized to engage professionals, experts and advisors and connection with its performance of its duties hereunder and the Company shall pay or reimburse and be responsible for all reasonable third-party costs and expenses incurred by the Partnership Representative in performing its, his or her duties. Each Member and former Member shall cooperate fully with the Partnership Representative with respect to any tax actions, examinations or proceedings relating to the Company.



**ARTICLE XI**  
**RESTRICTIONS ON TRANSFERS OF MEMBERSHIP INTERESTS;**  
**ADMISSION OF SUBSTITUTE MEMBERS;**  
**OTHER MATTERS AFFECTING MEMBERSHIP INTERESTS**

Section 11.1 Restrictions on Transfer of Membership Interests.

(a) Except as provided in with Section 11.4, no Member may offer to Transfer or Transfer, in whole or in part, such Member's Membership Interest without the prior written consent of the Managing Member. Any purported Transfers made in violation of this ARTICLE XI shall be void ab initio.

(b) No Member may Transfer, in whole or in part, such Member's Membership Interest if such Transfer would cause the termination of the Company for federal income tax purposes, and any purported Transfer that would cause the termination of the Company or cause the Company to be taxed as a corporation for federal income tax purposes shall be void ab initio. No Member shall withdraw from the Company without the prior written consent of the Managing Member. If requested by the Managing Member, counsel for the Company shall give its written opinion to the Managing Member (the expenses of which shall be borne by the transferring Member) as to whether any contemplated Transfer would cause the termination of the Company or cause the Company to be taxed as a corporation for federal income tax purposes and the Managing Member shall be entitled to rely conclusively upon such opinion in determining whether such Transfer would cause the termination of the Company and whether consent to such disposition should be given.

(c) Unless otherwise permitted by the Managing Member, no Transfer of any Membership Interest of a Member may be made unless the Managing Member shall have received a written opinion of counsel satisfactory to the Managing Member that such proposed Transfer may be affected without (absent waiver by the Managing Member):

(i) registration of the Membership Interest being made under the Securities Act of 1933, as amended;

(ii) violating any applicable state securities or "Blue Sky" law (including investment suitability standards) of the U.S. or the laws of any other jurisdiction;

(iii) causing the assets of the Company to be considered assets of an "employee benefit plan" within the meaning of the DOL Regulations;

(iv) the Company becoming subject to the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act");

(v) violating the Act or any other applicable laws or regulations; or

(vi) cause the Company to be (1) terminated as a Company for Federal income tax purposes or (2) treated as a corporation for Federal income tax purposes.

(d) In no event shall the Membership Interest of a Member or any portion thereof be Transferred to a minor or incompetent, unless by will or intestate succession.

#### Section 11.2 Admission of Substitute Member.

(a) Subject to the provisions of this ARTICLE XI, unless expressly waived by the Managing Member in writing, an assignee of the Membership Interest of a Member shall be deemed admitted to the Company as a Member (hereinafter a “Substitute Member”) only upon the satisfactory completion of each of the following:

(i) consent of the Managing Member shall have been given, which consent shall be evidenced by a written consent executed by the Managing Member;

(ii) the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement (as it may be amended from time to time) and such assignee shall have expressly assumed all of the obligations of the assignor Member hereunder, and shall have executed such other documents or instruments as the Managing Member may require in order to affect the admission of such person as a Member;

(iii) an amendment to any applicable document if required by the Act, evidencing the admission of such Person as a Member shall have been filed;

(iv) the assignee shall have delivered a letter containing a representation that the assignee’s acquisition of the Membership Interest is made as a principal, for the assignee’s own account, for investment purposes only and not with a view to the resale or distribution of such Membership Interest, and that the assignee will not Transfer such Membership Interest or any fraction thereof to anyone in violation of this Agreement;

(v) if the assignee is a corporation, trust, partnership, limited liability company or other entity, the assignee shall have provided to the Managing Member evidence satisfactory to counsel for the Company of its authority to become a Member under the terms and provisions of this Agreement;

(vi) the assignee shall have complied with all applicable governmental rules and regulations, if any;

(vii) the assignee meets the suitability requirements for investing in the Company and the assignee completes the Subscription Documents provided by the Managing Member; and

(viii) all costs and expenses incurred by the Company and Managing Member in connection with this Section 11.2 shall be paid by the person or entity seeking to become a Substitute Member.

#### Section 11.3 Rights of Assignee of Membership Interest.

(a) Subject to the provisions of Section 11.1, and except as required by operation of law, the Company shall not be obligated for any purposes whatsoever to recognize

the assignment by any Member of such Member's Membership Interest until the Company has received notice thereof.

(b) Any Person who is the assignee of all or any portion of the Membership Interest of a Member, but who has not become a Substitute Member, and desires to make a further disposition of such Membership Interest, shall be subject to all the provisions of this ARTICLE XI to the same extent and in the same manner as any Member desiring to make a disposition of such Member's Membership Interest.

Section 11.4 Effect of Bankruptcy, Death or Incompetence of a Member. The bankruptcy of a Member or an adjudication that a Member is incompetent (which term shall include, but not be limited to, insanity), shall not cause the termination or dissolution of the Company and the business of the Company shall continue. If a Member becomes bankrupt, the trustee or receiver of such Member's estate or, if a Member dies, such Member's executor, administrator or trustee, or, if such Member is adjudicated incompetent, such Member's committee, guardian or conservator, shall have the rights of such Member for the purposes of settling or managing such Member's estate or property and such power as the bankrupt, deceased or incompetent Member possessed to dispose of all or any part of such Member's Membership Interest and to join with any assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Member.

Section 11.5 No Recognition of Certain Transfers. If a Member Transfers all or a portion of its Membership Interest, including pursuant to any attachment by a creditor, or assignment for the benefit of any creditor, the transferee or assignee shall: (a) be entitled only to receive that proportion of Net Profit and Net Loss, and any distribution of Distributable Cash attributable to the Membership Interest acquired by reason of such disposition from and after the effective date of such disposition, and only upon written notification of same to the Managing Member; and (b) have no other rights as a Member unless admitted as a Substitute Member in accordance with the terms of this Agreement.

## **ARTICLE XII**

### **REPRESENTATIONS AND WARRANTIES; CONFIDENTIALITY**

Section 12.1 Members. Each Member represents and warrants to the Company and to every other Member as follows:

(a) Each Member will provide promptly, upon request by the Managing Member, all financial data, documents, reports, certifications, or other information necessary or appropriate to enable the Company to apply for and obtain an exemption from the registration provisions of applicable law, and any other information required by governmental agencies having jurisdiction over the Company.

(b) There is no misrepresentation contained in the Subscription Documents completed by the Member.

(c) If such Member is a corporation, trust, partnership, limited liability company or other entity, that the officer signing on its behalf has been duly authorized to execute and deliver this Agreement.

Section 12.2 Managing Member. The Managing Member hereby represents and warrants as of the date hereof to the Company and to the Members as follows:

(a) That to its knowledge, no material default by it or the Company (or event which, with the giving of notice or the passage of time or both, would constitute a default) has occurred under any agreement affecting the Company or its assets.

(b) That it has no actual knowledge of any claim, litigation, investigation, legal action or other proceeding in regard to liens affecting the Company or its assets; that to its knowledge, no such claim, litigation, investigation, legal action or other proceeding is threatened before any court, commission, administrative body or other authority.

Section 12.3 Confidentiality.

(a) Unless otherwise approved in writing by the Managing Member, each Member agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Membership Interest in the Company or for purposes of filing such Member's tax returns or for other routine matters required by law) nor to disclose to any Person, any information or matter relating to the Company or any of its affairs and any information or matter related to any Project, other than disclosure to such Member's owners, Managing Members, officers, employees, agents, advisors or representatives having a duty to such Member to maintain the confidentiality of such information (each such Person or Person acting in a similar capacity being hereinafter referred to as an "Authorized Representative"); provided; that such Member and its Authorized Representatives may make such disclosure to the extent that: (i) the information being disclosed is publicly known at the time of any proposed disclosure by such Member or its Authorized Representative through no act or omission by such Member or its Authorized Representative that is in breach of or violates the terms of this Agreement; (ii) the information subsequently becomes publicly known through no act or omission of such Member or its Authorized Representative; (iii) the information otherwise is, or becomes known to, such Member other than through disclosure by the Company, the Managing Member or by a Person that the Member or its Authorized Representative knows has an obligation to the Company to maintain the confidentiality of such information; (iv) such disclosure, in the reasonable opinion of legal counsel (which may be inside counsel) of such Member or its Authorized Representative, is required by law; (v) such disclosure is required to be made to examiners, auditors, inspectors, attorneys or Persons with similar responsibilities or duties of a recognized industry self-regulatory association, regulatory or governmental body, taxation authority, or securities exchange or (vi) such disclosure is in connection with any litigation or other proceeding between such Member and the Managing Member. Prior to making any disclosure required by law, the applicable Member shall notify the Managing Member of such disclosure and advise the Managing Member as to the opinion referred to above. Prior to any disclosure to any Authorized Representative, the applicable Member shall advise such Authorized Representative of the obligations set forth in this Section 12.3(a), inform such Authorized Representative of the confidential nature of such information and direct such Authorized Representative to keep all such information in the strictest confidence and to use such information only for purposes relating to such Member's Membership Interest. Any disclosure of confidential information by an Authorized Representative of a Member that conflicts with or violates the terms and provisions of this Section 12.3(a) (interpreted as if the Authorized

Representative was bound by the terms hereof) shall be deemed a breach of the provisions of this Section 12.03(a) by the applicable Member.

(b) The provisions of this Section 12.3 shall survive for a period of one (1) year from the date of dissolution of the Company. The provisions of this Section 12.3 were negotiated in good faith by the parties hereto and the parties hereto agree that such provisions are reasonable and are not more restrictive than is necessary to protect the legitimate interests of the Members and the Company.

(c) Any obligation of a Member pursuant to this Section 12.3 may be waived by the Managing Member.

### **ARTICLE XIII** **POWER OF ATTORNEY**

Section 13.1 Execution and Consent. Each Member hereby irrevocably constitutes and appoints the Managing Member and its respective successors (hereinafter referred to as “Special Attorney”) as the attorney in fact for such Member with power and authority to act in the Member’s name and on the Member’s behalf to execute, acknowledge, swear to and file documents and instruments necessary or appropriate to the conduct of Company business, which will include, but not be limited to, the following:

(a) this Agreement, as well as amendments thereto as required by applicable law; and

(b) any other certificates, instruments and documents, including fictitious name certificates, as may be required by, or may be appropriate under, laws of any jurisdiction; and any documents that may be required to effect the continuation of the Company, the admission of an Additional or Substitute Member, the withdrawal of a Member, or the dissolution and termination of the Company; provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement and applicable law.

Section 13.2 Procedural Aspects. No Member shall revoke the power of attorney granted by each Member to the Special Attorney and such power of attorney:

(a) may be exercised by the Special Attorney for each Limited Member by listing all of the Members executing any instrument with a single signature of such Special Attorney acting as attorney in fact for all of them; and

(b) shall survive the delivery of an assignment by a Member of the whole or any portion of such Member’s Membership Interest; except that where the assignee has been approved in accordance with the provisions of this Agreement for admission to the Company as a Substitute Member, the Power of Attorney shall survive the delivery of such assignment for the sole purpose of enabling the Special Attorney to execute, acknowledge and file any instrument necessary to effect such substitution.

**ARTICLE XIV**  
**DISSOLUTION AND LIQUIDATION**

Section 14.1 Dissolution. The Company shall be dissolved upon the earliest to occur of:

(a) the Involuntary Withdrawal of the Managing Member, or any other event that results in such entity ceasing to be a Managing Member, unless the remaining Members by the Majority Vote of the Members agree, within ninety (90) days after such event, to continue the company with a new and qualified substitute Managing Member pursuant to and in accordance with the terms and conditions set forth in ARTICLE VI hereof;

(b) the Seventy-Five Percent Vote of the Members in accordance with Section 6.2, provided however, that if the Company is to be dissolved prior to the end of the Initial Term, the prior consent of the Class A Members and Class B Members jointly holding more than seventy-five percent (75%) of the aggregate Capital Commitments of all the Class A Members and Class B Members, voting as one class, shall also be required;

(c) the election by the Managing Member to dissolve the Company because, due to a change in market conditions or law or new application of existing law, the Company will not likely be able to operate in the manner originally contemplated and, as a consequence, are unlikely to achieve its investment objectives upon prior written notice to the Members;

(d) the expiration of the term of the Company as determined in accordance with Section 1.6; or

(e) the happening of any other event that under the Act or any other law of the state of New York that requires the dissolution of the Company.

Section 14.2 Liquidation. .

(a) Upon dissolution of the Company for any reason, the Company shall immediately commence to wind up its affairs. The Company's property and assets or the proceeds from the liquidation thereof shall be distributed in the following order of priority:

(i) first, for the payment of debts and liabilities of the Company to Persons other than Members and their Affiliates;

(ii) second, to the setting up of any reserve which the Managing Member deems reasonably necessary to provide for any contingent or unforeseen liabilities or obligations of the Company;

(iii) third, to the payment of debts and liabilities of the Company to the Members and their Affiliates; and

(iv) fourth, to the Members, *pro rata* in accordance with their respective Capital Accounts.

(b) If assets are to be distributed in kind, the Members' Capital Accounts shall be appropriately adjusted before any such distribution to reflect any Net Profit or Net Loss that would have been allocated if the property distributed in kind had been sold for its fair market value (net of liabilities), as determined by the Managing Member in its sole discretion, by the Company prior to dissolution.

(c) A full accounting of the assets and liabilities of the Company shall be taken, and a statement thereof shall be furnished to each Member within 30 days after the Distribution of all of the assets of the Company. Upon such final accounting, the Company shall terminate, and the Articles of Organization shall be cancelled in accordance with the Act.

Section 14.3 Notice of Dissolution. Upon the dissolution of the Company, the Liquidators shall promptly notify the Members of such dissolution as well as known creditors and claimants whose addresses appear on the Company's records.

Section 14.4 Distribution in Kind. Notwithstanding the provisions of Section 14.2, if on dissolution of the Company the Liquidators shall determine that an immediate sale of part or all of the Company's assets would be impractical or would cause undue harm, loss or injury to the Members, the Liquidators may, in their absolute discretion, either defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Company (other than those to Members) or distribute to the Members, in lieu of cash, interests in a liquidating trust with terms and conditions determined by the Liquidators. The Liquidators will provide a notice to the Members not less than ten (10) Business Days prior to such distribution describing in reasonable detail the property to be distributed, the terms and conditions of the liquidating trust, if any, and the fair market value of such property (as determined by the Liquidators in good faith). Any such in-kind distribution shall be made to the Members in accordance with the priorities provided in Section 10.7 as if the fair market value of such property were Distributable Cash, provided, that with respect to any such in-kind distribution, each Member shall have the right and authority to disavow and refuse to accept such distribution or assign or direct that such distribution be paid to any other Person, in whole or in part, and each such transfer or assignment shall be approved by the Managing Member subject to applicable law; provided, that the Company shall have no obligation to such transferee or assignee other than to make such in-kind distribution that would otherwise be made to the transferring or assigning Member.

Section 14.5 Final Statement. As soon as practicable after the dissolution of the Company, a final statement of its assets and liabilities shall be prepared by the accountants for the Company and furnished to the Members.

## **ARTICLE XV** **GENERAL PROVISIONS**

Section 15.1 Address and Notices. The address of each Member for all purposes shall be the address set forth on the signature page of this Agreement or such other address of which the Managing Member has received written notice. Any notice, demand or request required or permitted to be given or made hereunder shall be in writing and shall be deemed given or made (a) when delivered in person or (b) one (1) Business Day after deposit thereof to a nationally

recognized overnight courier including the U.S. Postal Service Express Mail and Federal Express (with the applicable postage or fee paid); (c) three (3) Business Days after deposit thereof with the U.S. Postal Service with the applicable postage paid; or (d) when delivered by telecopy or electronic mail, if a copy of such notice is also sent in a manner described in the foregoing clauses of this Section 15.1. All Members shall notify the Managing Member in writing of any change in address promptly after any such change.

Section 15.2 Interpretation. All Article and Section titles and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. Any reference to any statute or other law shall include amendments to such statute or law and any interpretations of such statute or law by a court of competent jurisdiction or applicable regulatory authority. The singular form of nouns, pronouns and verbs shall include the plural and vice versa. The term “including” shall be deemed to mean “including without limitation”. Any reference to a Section, Exhibit, or Schedule shall be deemed to mean a Section to this Agreement or an Exhibit or Schedule to this Agreement unless the context otherwise requires. Unless otherwise provided in this Agreement, any reference in this Agreement to the power, discretion or authority of the Managing Member shall mean that such power, discretion, or authority may be exercised or withheld or not exercised in the sole and absolute discretion of the Managing Member.

Section 15.3 Further Action. The parties shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate to achieve the purposes set forth in this Agreement.

Section 15.4 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the New York. Any disputes arising from or related to this Agreement shall be construed in accordance with and governed by the laws of the New York. The parties hereto agree to submit to the exclusive jurisdiction of the federal and Territorial courts located within the New York in connection herewith.

Section 15.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all Members, and each of the successors and assigns of the Members, except such right or obligation of a Member under this Agreement that may not be assigned by such Member to another Person without first obtaining the written consent of all other Members.

Section 15.6 Integration. This Agreement and each Member’s Subscription Agreement delivered to the Company by such Member and any side letter or similar agreements entered into as provided below, constitute the entire agreement among the parties pertaining to the subject matter hereof, and supersede all prior agreements and understandings pertaining thereto. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change, or restrict the express provisions hereof. Notwithstanding any other provision of this Agreement, or any Member’s Subscription Agreement, the Managing Member may, on its own behalf or on behalf of the Company, without the approval of any Member, enter into side letters or other similar agreements with one or more Members which has the effect of establishing rights under, or altering or supplementing the terms hereof, or of any Subscription Agreement, and each such side letter or other similar agreement shall be deemed to be part of this Agreement with



respect to such Member. The parties hereto agree that any terms contained in a side letter or similar agreement with a Member shall govern with respect to such Member, notwithstanding the provisions of this Agreement or of any Subscription Agreement. To the extent there are any inconsistencies between the terms and provisions of this Agreement and the Subscription Agreement, or any other document entered into by the Members, or any one of them, with respect to the Company (except for any side letters), the terms and conditions of this Agreement shall govern and be binding.

Section 15.7 Amendment.

(a) This Agreement may be modified or amended only by affirmative vote of the Class A Members and Class B Members, except that the Managing Member may amend this Agreement from time to time without the consent, approval, or other authorization of, or notice to, any of the Members under the following circumstances, in the opinion of the Managing Member:

(i) To amend Schedule I of the Agreement as appropriate from time to time to update the information therein;

(ii) To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under the Agreement that will not be inconsistent with the provisions of the Agreement or the Company's Private Placement Memorandum previously delivered to the Class A Members and Class B Members;

(iii) To delete or add any provision of the Agreement required to be so deleted or added for the benefit of Members by the staff of the U. S. Securities and Exchange Commission or by a state "Blue Sky" Commissioner or similar official;

(iv) To minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, defining "plan assets" for ERISA purposes;

(v) To comply with applicable governmental laws and regulations governing monetary laws and investments as in effect from time to time, including without limitation the USA Patriot/Freedom Act;

(vi) As required by a lender making a loan to the Company or any Project;

(vii) To modify the allocation provisions of the Agreement to comply with Code §§ 704(b) and 514(c)(9);

(viii) To change the name and principal place of business of the Company;

(ix) To decrease the rights and powers of the Managing Member (so long as such decrease does not impair the ability of the Managing Member to manage the Company and conduct its business affairs); and

(x) To make any amendments that expand or improve the rights, benefits and/or economic interests of the Managing Member under the Agreement (without, in more than a *de minimis* manner, adversely affecting the economic interests or voting rights of any Members, unless each such adversely affected Member consents in writing).

(b) Notwithstanding the foregoing, no amendment may: (i) convert a Member's Membership Interest to that of the Managing Member or modify the limited liability of any Member, without the consent of each affected Member; or (ii) amend or modify the rights of the Members to distributions pursuant to the provisions of Section 10.7 or, upon liquidation of the Partnership, Section 14.2 or Section 14.4; or (iii) amend or modify the allocation of income, gains, losses or deductions of the Company to the Members in accordance with the provisions of ARTICLE X; or (iv) amend the provisions of this Section 15.7 or any provision requiring the Seventy-Five Percent Vote of the Members without first obtaining the Seventy-Five Percent Vote of the Members; or (v) amend any provision of Section 1.3 (Purpose); or (vii) amend any provision hereof which requires the consent or approval of Members (or a particular class of Members) holding a specified percentage of the Capital Commitments in the Company without the consent of the Members (or a particular class of Members) holding such specified percentage of Capital Commitments.

(c) In addition to the foregoing, the Managing Member shall be authorized to enter into one or more side agreements with any Member without notice to or the consent of any Member, in order to implement or document the exercise of the Managing Member's discretionary authority under any provision of this Agreement to modify the terms of this Agreement with respect to such affected Member.

Section 15.8 Side Letters. Notwithstanding any provisions of this Agreement (including Section 15.7 hereof) or of any Subscription Agreement to the contrary, it is hereby acknowledged and agreed that the Company, and the Managing Member on its own behalf or on behalf of the Company, may, without the approval of any other Member, enter into a side letter or similar agreement (each, a "Side Letter") to or with a Member which has the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or of a Subscription Agreement between such Member and the Company. The parties hereto agree that any terms contained in a Side Letter shall govern with respect to such Member notwithstanding the provisions of this Agreement or of any Subscription Agreement. Except as required by law, the Managing Member and the Company shall not be required to deliver the Side Letter or disclose the existence of any Side Letter, or the terms and agreements contained therein to any Member.

Section 15.9 No Third-Party Rights. Except as otherwise granted by the Managing Member, including to any lender under a credit facility, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

Section 15.10 Waiver by Member. No failure of a Member to exercise, and no delay by a Member in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by a Member of any such right or remedy under this Agreement shall be effective unless made in a writing duly executed by all of the Members and specifically referring to each such right or remedy being waived.

Section 15.11 Rights and Remedies.

(a) The rights and remedies of any of the Members hereunder shall not be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

(b) Each of the Members confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any Member aggrieved as against the other Members for a breach or threatened breach of any provision hereof, it being the intention of this paragraph to make clear that the respective rights and obligations of the Members hereunder shall be enforceable in equity as well as at law or otherwise.

Section 15.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docuSign.com](http://www.docuSign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 15.13 Waiver of Partition. Each Member hereby waives any right to partition of the Company property.

Section 15.14 Counsel. Each Member hereby acknowledges and agrees that any law firm retained by the Company in connection with the legal aspects of the organization of the Company, the offering of Membership Interests in the Company, the investment in Projects, the management and operation of the Company, or any dispute between the Members, is acting as counsel to the Company and as such does not represent or owe any duty to any Member in connection with such retention. Each Member further acknowledges that the foregoing law firm shall owe no direct duties to such Member. Each Member further represents and acknowledges that such Member was either represented by its own separate and independent counsel or had an opportunity to be so represented in connection with the execution and delivery of this Agreement. In the event that any dispute or controversy arises between any Member and the Company, then each Member agrees that such law firm may represent the Company in any such dispute or controversy to the extent permitted by applicable rules relating to professional ethics, and each Member hereby consents to such representation. Each Member jointly and severally forever waive any claim that said law firm's representation of the Company hereunder, now and in the future on matters for which said law firm is retained as counsel by the Company, constitutes a conflict of interest.

**IN WITNESS WHEREOF**, this Limited Liability Company Operating Agreement of BREF Fund I, LLC has been duly executed as a deed as of the day and year first above written.

**COMPANY:**

BREF FUND I, LLC

BY: BLM Manager, LLC,  
Its Managing Member

By: \_\_\_\_\_  
Name: Thomas Lopez-Pierre  
Title: Fund Manager

**OPERATING AGREEMENT  
OF  
BREF FUND I, LLC**

This constitutes the undersigned's Signature Page to the Limited Liability Company Operating Agreement of BREF Fund I, LLC to which this Signature Page is attached (the "Operating Agreement").

The undersigned acknowledges that he, she or it has received and reviewed a copy of the Operating Agreement, and desiring to become a "Member" (as that term is defined therein) of BREF Fund I, LLC does hereby: (i) acknowledge and agree to join and become a party to the Operating Agreement and to be bound by all the terms and conditions thereof as indicated by his, her or its signature below; and (ii) instruct and agree that this Signature Page may (and shall) be attached to the Operating Agreement as a counterpart signature thereof.

The Undersigned:

Dated as of \_\_\_\_\_, 20\_\_  
(Dated)

\_\_\_\_\_  
Member's Name

\_\_\_\_\_  
Member's Signature and title, if any

Member's Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ E-Mail

(\_\_\_\_) \_\_\_\_\_  
(Telephone number)

(\_\_\_\_) \_\_\_\_\_  
(Facsimile number)