

# Axis Income Fund, LLC

## Operating Agreement

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**A Florida Limited Liability Company**

**January 7, 2020**

### **NOTICE:**

THE UNITS OF MEMBERSHIP INTEREST IN THE COMPANY DESCRIBED IN THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE FLORIDA SECURITIES ACT OR UNDER OTHER STATE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF SUCH UNITS OR INTERESTS IS RESTRICTED AS STATED IN THIS OPERATING AGREEMENT, AND IN ANY EVENT IS PROHIBITED UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO IT AND ITS COUNSEL THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION THEREFROM, AND THE FLORIDA SECURITIES ACT.

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# 1. Formation, Name, Purposes

This Operating Agreement (the Agreement) is made and entered as of the date executed below by and among those Persons whose names and addresses are set forth in the Company records and who have signed this Agreement (the Members), being the Members of Axis Income Fund, LLC, a Florida manager-managed limited liability company (the Company), and the Manager, each of whom represent and agree as follows:

## 1.1 Florida Limited Liability Company

Each of the signatories to this Agreement shall be referenced herein as a “Member” and collectively, as the “Members” as defined in Appendix C hereof.

The Manager has formed a manager-managed Florida limited liability company (the Company) by executing and delivering the Articles of Organization to the Florida Department of State in accordance with the Florida Revised Limited Liability Company Act, (the Act) codified in the Florida Statutes, Title XXXVI, Chapter 605, sections 605.0101 through 605.1108, as may be amended from time to time. The rights and liabilities of the Members shall be as provided in the Act except as may be modified in this Agreement.

The Members acknowledge that under the applicable provisions of the Act, the Company may be either “member-managed” or “manager-managed”, and that they have specifically, by their signatures on the Subscription Agreement, which is hereby incorporated by reference and forms an inextricable part of this Agreement, elected to form a manager-managed Company. Accordingly, management of the affairs of the Company shall be vested in the Manager of the Company, as set forth in Article 6 hereof, subject to any provisions of this Agreement (e.g., Articles 7 or 8), or in the Act restricting, enlarging or modifying the rights and duties of the Manager or management procedures.

The Members shall immediately, and from time to time hereafter, execute all documents and do all filing, recording, and other acts as may be required to comply with the operation of the Company under the Act.

## 1.2 Name

The name of the Company is Axis Income Fund, LLC, a Florida limited liability company.

REST OF PAGE INTENTIONALLY LEFT BLANK

### 1.3 Place of Business

The Company's principal place of business is:

Axis Income Fund, LLC  
c/o Axis Income Fund Management, LLC  
215 Anastasia Blvd.  
St. Augustine, FL 32080

or such other place as the Manager shall determine.

### 1.4 Manager

The initial Manager of the Company is Axis Income Fund Management, LLC, a Florida limited Liability company (the Manager). Its managers and key principals are Bryan Greiner and George Bochis (the Key Principals). The Key Principals will be making investment decisions on behalf of the Company. Their biographies are included in the Investment Summary, attached hereto as Exhibit 4.

The initial members of the Manager include Bryan Greiner George Bochis. The Key Principals may admit additional members to the manager as they deem appropriate.

The address where all correspondence for the Manager should be sent is:

Axis Income Fund Management, LLC  
c/o Augustine Development  
215 Anastasia Blvd.  
St. Augustine, FL 32080

#### 1.4.1 *Optional Joint Venture*

The Company may enter into a joint venture with Affiliates of the Manager or a third-party private equity partner for acquisition of all or part of the Properties. Doing so may increase the Company's buying power. In this case, the Company may form a new joint venture entity with the Company and its joint venture partner as members, and the joint venture entity would become the sole owner of the Subsidiaries, or the Company may add a second class of Interests superior to Investor Interests to accommodate the JV partner.

Should a joint venture occur, the Company expects that Axis Investment Fund Management, LLC will retain co-management or management control over both such joint venture and the Company, unless removed by action of the joint venture members. Further, any such joint venture will likely require approval of a lender.

## 1.5 Manager's Compensation

The Manager or its members shall receive Fees, an allocation of Profits and Losses, and a right to distributions from the Company in accordance with Articles 4 and 5 hereof. Further, they shall be reimbursed for all out-of-pocket expenses incurred in connection with organization of the Company or due diligence connected with acquisition of the Properties.

## 1.6 Members

The Company will have multiple classes of Members. There are two (2) classes of Members, Class A and Class B. In addition, Class A has three (3) subclasses, Class A Fixed, Class A-1 and Class A-2 A-2 (see Article 2.1 for more information). The Manager shall maintain records with the name and address of each of the Members.

A Member's execution of the Signature Page of the Subscription Agreement will also constitute its acceptance of this Agreement. See Article 2.1 for a further description of Member classes.

## 1.7 Nature of Members' Interests

The Interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company Assets shall be held in the name of the Company. Neither any Member, nor a successor, representative, or assignee of such Member shall have any right, title or interest in or to any property or the right to partition any real property owned by the Company. Interests may, but are not required to, be evidenced by a certificate of Membership Interest or Receipt and Acknowledgment issued by the Company, in such form as the Manager may determine.

A Member's execution of the Signature Page of the Subscription Agreement will also constitute its acceptance of this Agreement. The Manager will maintain an updated list of all Members.

## 1.8 Intent to Be Treated as a Partnership

It is the intent of the Manager and the Members that the Company shall always be operated in a manner consistent with its treatment as a partnership for federal income tax purposes. It is also the intent of the Members that the Company not be operated or treated as a partnership for purposes of section 303 of the Federal Bankruptcy Code. No Manager or Member shall take any action inconsistent with the express intent of the Members.

## 1.9 Nature of Business

The Company intends to acquire and/or develop self-storage facilities, hotels, multi-family residential property and residential subdivisions (the Properties) throughout the United States (US), but with a focus in the Southeastern US.

Notwithstanding the foregoing, subject to unanimous approval of the Members, the Company may engage in any lawful business activity in which a Florida limited liability company may



engage, except that the Company shall not engage in the trust company business or the business of banking or insurance.

## 1.10 Single Purpose Entities

Title to each Company Property will be held in the name of a single purpose limited Liability company (Subsidiary). The Manager expects that each Subsidiary will be wholly-owned by the Company, who will be its sole member, with the Manager of the Company as the Manager of the Subsidiary or by a JV with the Company as one of the JV Members. Therefore, the Company will own the Properties via its Subsidiaries. Profits and Losses from each Property will be carried up to the Company where allocations and Distributions will be made to the Members.

The Subsidiaries will be formed for the sole purpose of taking title to the Properties, and the sole Member of the Subsidiary will be the Company (or an optional joint venture), which will own one hundred percent (100%) of the membership interests in the Subsidiary.

Note: Individual Class A investors will not be investing in a specific Property. All Members of the Company will own a portion of the Company, which expects to own multiple Properties. Thus, returns from all Properties will be consolidated and distributed from the Company, and not from the Property or Subsidiary level. The Investment Summary (Exhibit 4) describes the Manager's business model that will be used to identify additional Properties for the Company to purchase.

## 1.11 Objectives

The Manager intends to accomplish the following objectives for the Members:

- Acquire, operate and eventually dispose of the Properties.
- Provide Members with real estate investment opportunities.
- Provide Members with limited liability.
- Provide Cash Distributions for the Members.
- Provide for self-liquidation of the investment.
- Allow the Class A Members minimal involvement in real estate management.
- Keep Members apprised of Property affairs.

## 1.12 Term

The Company commenced operations upon the filing of its Articles of Organization and shall be perpetual unless sooner terminated under the provisions of Article 14 hereof.

1.13 Registered Agent

The Company’s initial office and initial registered agent are provided in its Articles of Organization. The Manager may change the registered agent (or such agent’s address) from time to time by causing the filing of the new address and/or name of the new registered agent in accordance with the Act. However, the Company shall, at all times, maintain a registered agent in the State of Florida who shall be authorized to accept service on behalf of the Company.

2. Capitalization of the Company

2.1 Member Classes

Member classes shall be allocated as provided below:

2.1.1 Class A Members

The Company will sell investment units (Units) or Interests to Investors to capitalize the Company. Investors who acquire Interests in the Company will become Class A Members of the Company.

Class A Units sold via this Memorandum will comprise sixty percent (60%) of the total Interests in the Company at any given time and will be entitled to a portion of Distributable Cash, if any, as described in Article 4 hereof.

There are three (3) subclasses of Class A Members, each of whom will be entitled to an annual, cumulative preferred return (the Preferred Return) from Distributable Cash generated by the Company. The amount of the Preferred Return will be calculated based on the amount of a Class A Member’s Capital Contribution at the time the Distribution is made and associated subclass, as follows:

Class	Contribution	Preferred Return
Class A Fixed	N/A	9%
Class A-1	≥ \$1,000,000 Investment	8%
Class A-2	\$50,000 - \$999,000	7%

The Manager, any Officers or any Affiliates of the Manager may purchase Class A Units. As such, they will be entitled to all rights as Class A Members appurtenant to such Class A Units, including but not limited to the right to vote on certain Company matters as provided for in this Agreement and to receive distributions and allocations attributable to the Class A Units so purchased.

### 2.1.2 *Class B Members*

Axis Income Fund Class B, LLC, whose membership is comprised of members of the Manager or their Affiliates, or others whom the Manager may admit as Class B Members, will retain ownership of forty percent (40%) of the Membership Interests in the Company in the form of Class B Interests in exchange for a total Capital Contribution of One Thousand Dollars (\$1,000) and for their noncapital contributions in the form of past services they have contributed to make this investment opportunity available to the Class A Members.

## 2.2 Reinvestment Period

The three (3) years of Company operations shall be known as the reinvestment period (the Reinvestment Period). During the Reinvestment Period, solely at the discretion of the Manager, the Company may:

- Use the sales proceeds from any Property sold by the Company to purchase new Property for the Company.
- Acquire new Properties.
- Elect to exchange one or more Property for another under the 1031 exchange program.

## 2.3 Percentage Interests

The Manager shall list the number of Units purchased and/or the dollar amount of each Member's Capital Contribution and Percentage Interests in Appendix A. Percentage Interests of the Members will be calculated in relation to the other Members in their Member class or in relation to the total Interests, as follows:

- The Interest of a Class A Member in relation to other Class A Interests will be calculated by dividing an individual Class A Member's Capital Contribution by the total Capital Contributions of all Class A Members.
- The Interest of an individual Class B Member in relation to other Class B Interests will be calculated by dividing an individual Class B Member's Capital Contribution by the total Capital Contributions made by all Class B Members.
- When determining an individual Member's percentage of the total Interests in the Company (i.e., for determining voting Interests where a vote of all Members is required), the Class A Interests calculated in bullet 1 above shall be multiplied by 0.70; and Class B Interests calculated in bullet 2 above shall be multiplied by 0.30; to determine their respective share of the total Interests in the Company).

## 2.4 Extension or Re-Opening of the Offering

Although the Manager intends to raise sufficient Capital Contributions from the initial sale of Class A Units for acquisition, operations and capital improvements of the Property, it is possible

that the Manager may extend the Offering beyond the initial Offering Period or re-open the Offering to new Class A Members in order to raise additional funds with which to operate the Property or make necessary repairs or capital improvements. The right to extend or re-open the Offering shall be personal to the Manager and shall not be enforceable by any third party, including any creditor of the Company.

On extension or re-opening of the Offering, current Class A Members will be offered the right of first refusal to make Additional Capital Contributions prior to opening up the Offering to new Investors. To the extent any Class A Member makes an Additional Capital Contribution or if new Class A Members are admitted, the Manager shall amend Company records to reflect each Member's adjusted Capital Contribution and Percentage Interest as appropriate. No interest or other sums or charges shall be payable on the initial or any subsequent Contributions to the capital of the Company, except as expressly set forth herein.

In the event the Manager elects to re-open the Offering to new Investors, the Manager may establish a new price for Class A Units based on the current estimated market value of the Property (as determined by the Manager using any reasonable, commercial method), or it may choose to offer Class A Units at the original price, at the Manager's sole discretion given the need and circumstances at that time.

If the proceeds of any Offering of new Class A Units are insufficient to meet the needs of the Property, the Manager reserves the right to do any of the following, as it deems appropriate given the circumstances:

- The Manager may sell Interests superior to the Class A Units in order to cover the shortfall, in which all Class A Units may become subordinate to the returns of such superior class of Investors; or
- The Manager may advance its own funds, obtain a loan from any Member, or obtain a loan from a third party as further described in Article 3.

## 2.5 Time of Capital Contributions; Withdrawal Not Permitted

Member Capital Contributions shall be made in full on admission to the Company. No Member shall have any right to demand or receive property (other than cash) in return for its Capital Contributions until dissolution of the Company except as may be specifically provided by and in accordance with the Act to the extent not inconsistent with this Agreement.

## 2.6 Return of Capital Contributions

Neither a Member nor the Manager shall be liable for the return of the Capital Contributions of any Members, or any portion thereof, and it is expressly understood that any such return of contributions shall be made solely from the assets of the Company.

## 2.7 Capital Accounts

An individual Capital Account shall be maintained for each Member in accordance with Treasury Regulation section 1.704-1(b)(2)(iv) and as further described in the attached Appendix B. Calculation of Member Percentage Interests will be determined on close of the offering to new Investors and shall be calculated as described in Article 2.3 hereof.

## 3. Manager Advances and Member Loans

If required to protect or preserve the Properties or if the Manager deems it to be in the best interest of the Company, the Manager has the sole discretion to apply other available Company funds and/or suspend Distributions for such time as may be necessary to pay any Company or Property obligations and/or to make needed Property repairs or improvements. However, if sufficient Company funds are not available, the Manager or one or more Members may loan funds to the Company subject to the following provisions:

### 3.1 Manager Advances

The Manager may but is not required to loan its own funds or defer reimbursement of its Fees or out-of-pocket expenses as an Advance. The Company shall reimburse the Manager for any such Advance from the date of the loan or deferral as soon as is practical together with the simple annual interest at no more than nine percent (9%). Interest on Manager Advances shall be an expense of the Company when paid and shall accrue from the date of inception for a Manager loan, or from the date reimbursement was due for any Advance related to a deferred reimbursement.

### 3.2 Member Loans

Alternatively, the Manager may obtain a loan from one or more Members as and when necessary to continue the business of the Company, which shall earn such rate as may be agreed by the parties.

### 3.3 Right and Priority of Repayment

Principal and interest payments for a Manager Advance or Member Loan will be paid as an expense of the Company as soon as sufficient Company funds are available or held indefinitely during operation of the Company in order to build up Company reserves, at the Manager's sole discretion, or as otherwise agreed by the parties in the case of a Member Loan. A Manager or Member that makes a loan to the Company shall be deemed an unsecured creditor of the Company for the purpose of determining its right and priority of repayment of interest and principal of such Manager Advance or Member Loan, and repayment of the principal will be paid in the order the Manager Advance or Member Loan was made.

Interest on Manager Advances or Member Loans shall be paid as an expense of the Company (the timing of which shall be in the sole discretion of the Manager) and shall accrue from the date of inception for a Member Loan or Manager Advance, or from the date reimbursement was due for any deferred Manager's expense reimbursements or Fees.

### 3.4 Third-Party Loans

In the event member Capital Contributions, Manager Advances, or Member Loans are insufficient to provide for the Property's needs, the Manager may obtain a loan and/or credit from one or more third parties as it deems appropriate to further the business objectives of the Company. Such loan shall be made to the Company (as borrower or debtor) on such terms as the Manager deems reasonable and appropriate after taking into account the urgency and need for the funds.

## 4. Distributions to Members

In general, the Manager intends to operate the Properties, the Company's Subsidiaries, and the Company, in such a manner as to generate Distributable Cash that the Company can share with its Members. Distributable Cash shall be determined in the sole discretion of the Manager after withholding sufficient Working Capital and Reserves. Distributions to Class A Members, when made, will be allocated among them in proportion to their Percentage Interests in the Class A Units. Distributable Cash, if any will be distributed until expended, in the order described in Articles 4.2 through 4.5 below, depending on the phase of operation of the Company. Distributions will be evaluated on a quarterly basis. The Manager expects that the first returns to Investors will not be paid until at least twelve (12) months after the closing on the first Property.

### 4.1 Interest on Funds Held by the Company

During the Company's acquisition phase, which includes the first three (3) year Reinvestment Period, any funds which have not been deployed for purchase of a Property may be held in a savings account in the Company's name will earn its proportionate share of interest generated by that account.

### 4.2 Cash Distributions during Operations

During operation of the Properties, Distributable Cash will be evaluated on a quarterly basis and when Distributions are made, they will be disbursed in the order provided below until expended. All Cash Distributions will be determined and calculated on a quarterly basis (i.e., a Class A-1 Member would be entitled to a two percent (2%) quarterly return before the Class B Distribution is determined.

- First to the Class A Members, a cumulative annualized preferred return calculated against the Unreturned Capital Contributions of the Class A Members (the Class A Preferred Return), the

percentage of which will be determined by subclass (i.e., Class A Fixed, Class A-1 or Class A-2), allocated amongst all Class A Members *pro rata*, as shown below:

- To Class A Fixed, a Preferred Return of nine percent (9%);
- To Class A-1 (>\$1,000,000 Investment), a Preferred Return of eight percent (8%);
- To Class A-2 (≥\$999,000 Investment), a Preferred Return of seven percent (7%); and
- Second, Class B Members will be entitled to a cumulative Distribution equivalent to thirty percent (30%) of available Distributable Cash (the Class B Distribution) calculated against the “average return” paid to the Class A Members. In the event there is insufficient Distributable Cash to pay the Class B Distribution from operations, the Class B Members may defer collection of all or part of this amount until sufficient cash is available.

For example: During a particular quarter, Class A Fixed receives 2.25%, Class A-1 receives a 2% Preferred Return, and Class A-2 receives a 1.75% Preferred Return. The total Capital Contributions of Class A Members to date is \$10,000,000.

*Question 1: What is the average return paid to Class A Members during that quarter?*

$$\frac{2.25+2+1.75}{3} = 2\%$$

*Question 2: What is the amount paid to Class A Members during that quarter?*

$$\$10,000,000 * .02 = \$200,000$$

*Question 3: If Class A receives \$200,000, representing 70% of the Distributable Cash, how much is owed the Class B Members for a 30% equivalent share as their Class B Distribution?*

$$\frac{\$200,000}{x} = 0.70/0.30; 0.70x = \$60,000; x = \$85,714.29$$

- Third, any remaining Distributable Cash will be split 70/30 between the Class A and Class B Members, with the Class A Members receiving seventy percent (70%) and the Class B Members receiving thirty percent (30%), until such time, if ever, that all Class A Members have received a refund of one hundred percent (100%) of their Capital Contributions, and Class A-1 Members have achieved an average annual rate of return (AAR) of seventeen percent (17%) and Class A-2 Members have achieved an AAR of fifteen percent (15%); after which any remaining Distributable Cash from that point forward will be split 30/70 between the Class A and Class B Members, with thirty percent (30%) of any remaining Distributable Cash paid to Class A (collectively, but distributed amongst all Class A Members *pro rata*), and seventy percent (70%) paid to the Class B Members.

For the purposes of Cash Distribution calculations only, Cash Distributions to Class A and Class B Members from operations will be treated as a return on investment. The amount of compensation the Class A or Class B Members may receive from the first year of operations cannot be determined at this time.

### 4.3 Cash Distributions from Capital Transactions within the Investment Period

During the Investment Period, the Company may use the proceeds from a “Capital Transaction” such as a refinance or sale of the Company’s Property to acquire additional Property. But in the event the Company elects not to acquire additional Property with the sale or refinance proceeds, Distributable Cash from such Capital Transactions, if any, will be distributed to Members as described in Article 4.4 below.

### 4.4 Cash Distributions from Capital Transactions after the Investment Period

Distributable Cash, if any, from a Capital Transaction, will be distributed in the order provided below until expended:

- First the Class A Members will receive all of the Distributable Cash *pro-rata* until they have received a refund of one hundred percent (100%) of their Unreturned Capital Contributions;
- Second, the Class A Members will receive any arrearages in the Preferred Returns described in Article 4.2 above;
- Third, the Class B Members will receive any arrearages in their Class B Distributions described in Article 4.2 above; and
- Fourth, any remaining Distributable Cash will be split 70/30 between the Class A and Class B Members, with the Class A Members receiving seventy percent (70%) and the Class B Members receiving thirty percent (30%), until such time, if ever, that all Class A Members have received a refund of one hundred percent (100%) of their Capital Contributions, and Class A-1 Members have achieved an average annual rate of return (AAR) of seventeen percent (17%) and Class A-2 Members have achieved an AAR of fifteen percent (15%); after which any remaining Distributable Cash from that point forward will be split 30/70 between the Class A and Class B Members, with thirty percent (30%) of any remaining Distributable Cash paid to Class A (collectively, but distributed amongst all Class A Members *pro rata*), and seventy percent (70%) paid to Class B.

For the purposes of Cash Distribution calculations only, all Distributions from Capital Transactions will be treated as a return of capital until the Class A Members have each received one hundred percent (100%) of their Unreturned Capital Contributions, after which any further returns will be considered a return on investment.

### 4.5 Cash Distributions on Dissolution and Termination

Upon dissolution of the Company, the Assets of the Company will be distributed as described below:



- First, to pay the creditors of the Company, including the Manager, a Member, or a third party who has loaned or advanced money to the Company or has deferred any reimbursements or Fees;
- Second, to establish Reserves against anticipated or unanticipated Company liabilities; and
- Third, to the Members as described in Article 4.4 hereof.

## **5. Manager's Fees or Other Compensation**

### **5.1 Expense Reimbursement**

In addition to the Cash Distributions described in Article 4, the Manager or their Affiliates who may have contributed funds toward organization of the Company or acquisition of the Properties will be reimbursed for their out-of-pocket expenses on production of receipts. The Company will not pay the Manager's overhead expenses.

The Manager will also be reimbursed for initial startup expenses it or its members may have paid for the Company including earnest money deposits, due diligence costs, closing costs, loan/lender application fees such as appraisals and engineering and environmental reports, property management fees, legal fees, and/or any travel or other reasonable expenses directly related to the Properties. Reimbursements may be paid as an expense of the Company prior to determining Distributable Cash.

Manager's Reimbursements may be deferred until sufficient cash is available, without forfeiting any right to collect, although the Manager may earn interest on deferred reimbursements if not paid when due. The maximum amount of reimbursements the Manager may receive cannot be determined at this time. Manager Advances for which repayment is deferred shall earn nine percent (9%) interest (as described in Article 3.1) from the date the Advance is made or the reimbursement is due (e.g., closing on a Property) to the date of repayment. Reimbursements for out of pocket expenses may be paid by the Company, as appropriate, at the Manager's discretion.

### **5.2 Fees Paid to Manager and/or Third Parties**

The Manager and/or third parties may earn Fees for services they provide on behalf of the Company as further described below. All Fees will be paid as an expense of the Company prior to determining Distributable Cash (as described in Article 4 above). The Manager may earn up to nine percent (9%) interest on any deferred Fees as described in Article 3.1.

#### *5.2.1 Organization and Due Diligence Fee*

As compensation for its efforts in organizing the Company, conducting due diligence on each Property, procuring the acquisition loans, and making this investment opportunity available to

Investors, the Manager will receive an organization and due diligence Fee up to three percent (3%) of the purchase price on acquisition of each Property acquired by the Company.

#### *5.2.2 Asset Management Fee*

The Manager will receive an asset management Fee of up to two percent (2%) of the total dollar amount raised by the sale of Class A Interests for its oversight of the Properties and operation of the Company. This Fee will be paid on a monthly basis.

#### *5.2.3 Property Management Fee*

The Company intends to hire a third-party Property Manager to manage the day-to-day operations of its Properties, however the Property Manager may be an Affiliate of the Manager. The property management Fee will be commensurate with local rates for such services.

#### *5.2.4 Refinance Fee*

For its efforts in obtaining refinancing on a Property, the Manager will earn a refinance Fee of two percent (2%) of the new loan amount for that Property.

#### *5.2.5 Disposition Fee*

For its efforts in marketing a Property for sale, the Manager will earn a disposition Fee of three percent (3%) of the gross sales price of each Property.

#### *5.2.6 Real Estate Commissions*

Bryan Greiner, who is a manager and member of the Manager, is a licensed Florida real estate sales associate. As such, he through his broker, may earn a commission on the purchase or sale of each Property.

#### *5.2.7 Crowdfunding Fees*

The Company may choose to use a Crowdfunding Platform to market this Offering to Class A Investors. In such event, the Company will make the agreement associated with such services available on request, although no specific Crowdfunding Platform has been identified to market the Company's Class A Units as of the date of this Memorandum. Crowdfunding marketing expenses, if applicable, will be paid as an expense of the Company.

#### *5.2.8 Broker-Dealer Fees*

The Company may choose to hire and pay commissions to a licensed securities Broker-Dealer and/or Registered Investment Advisor to market this Offering to Class A Investors. In such event, the Company will make the agreement associated with such services available on request, although no specific Broker-Dealer or Registered Investment Advisor has been identified to sell the Company's Class A Units as of the date of this Agreement. Commissions paid to such Persons,

if applicable, may be paid as an expense of the Company and will reduce the amount of funds that may be available for investment.

## **6. Rights and Duties of Manager**

### **6.1 Management**

The Manager shall manage all business and affairs of the Company. The Manager shall direct, manage, and control the Company to the best of its ability and shall have full and complete authority, power, and discretion to make any and all decisions and to do any and all things that the Manager shall deem to be reasonably required to accomplish the business and objectives of the Company.

### **6.2 Number of Managers, Tenure, and Qualifications**

Axis Income Fund Management, LLC shall be the initial Manager of the Company. The Manager shall hold office until a successor shall have been elected and qualified. Successor Manager(s) need not be a Member of the Company or a resident of Florida.

### **6.3 Authority of the Manager**

Except to the extent that such authority and rights have been reserved for the Members in elsewhere in this Agreement, the Manager shall have the obligation and the exclusive right to manage the day-to-day activities of the Company, including, but not limited to performance of the following activities. The Manager may:

- Capitalize the Company via the sale of Units or Interests in the Company as described in Article 2 hereof;
- Acquire by purchase, lease, or otherwise any real or personal property which may be necessary, convenient, or incidental to the accomplishment of the business of the Company;
- Borrow money and issuing of evidences of indebtedness necessary, convenient, or incidental to the accomplishment of the purposes of the Company and securing the same by mortgage, pledge, or other lien on a Property; including the right (but not the obligation) to personally and voluntarily guarantee such obligations;
- Open, maintain and close, as appropriate, all Company bank accounts and (subject to any limitations set forth herein) drawing checks and other instruments for the payment of funds associated with acquisition or maintenance of an individual Property;
- Make all decisions relating to the management, development, operations and maintenance of each Property and all portions thereof;
- Employ such agents, employees, general contractors, independent contractors and attorneys as may be reasonably necessary to carry out the purposes of this Agreement;

- Obtain, negotiate and execute all documents and/or contracts necessary or appropriate to accomplish any improvement of an individual Property or any portions thereof;
- Establish a reasonable Reserve fund for operation of the Company and potential future or contingent Company liabilities;
- Pay, collect, compromise, arbitrate or otherwise adjust any and all claims or demands of or against the Company or the Properties to the extent that any settlement of a claim does not exceed available insurance proceeds;
- Work with the C.P.A. firm in its preparation of Company budgets and financial reports, if necessary or appropriate to the Company's operation, including but not limited to, all federal and state tax returns and reports and periodic financial statements;
- To appoint a different Tax Representative;
- Execute and deliver bonds and/or conveyances in the name of the Company provided same are done in the ordinary course of the Company's business;
- Engage in any kind of legal activity and perform and carry out contracts of any kind necessary or incidental to, or in connection with the operation of the Company or the Properties;
- Make an annual calculation of the Estimated Market Value of the Company and report it to the Members using any commercially acceptable method for doing so;
- Make a decision to purchase or to sell each Property on behalf of the Company; and
- To reallocate among the other Members the Percentage Interests of a Member whose Interests are being surrendered, abandoned, otherwise voided, or reduced.

#### 6.4 Major Decisions; Restrictions on Authority of Manager

The Manager shall not have the authority to, and hereby covenants and agrees that it shall not make or perform any of the following Major Decisions without first having obtained the affirmative vote of a Majority of Interests of the Members:

- Cause or permit the Company to engage in any activity that is not consistent with the purposes of the Company as set forth in Articles 1.8 and 1.11 hereof.
- File a lawsuit on behalf of the Company or confess a judgment against the Company in an amount in excess of insurance proceeds.
- Knowingly perform any act that would subject any Members to liability as a general partner in any jurisdiction.
- Cause the Company to voluntarily take any action that would cause a bankruptcy of the Company.
- Change the tax status of the Company or take any action inconsistent with Article 1.8 hereof

and Section 3.2 of Appendix B hereto.

- Alter the Percentage Interests applicable to the Units, other than as described in Articles 2.1.2 (wherein allocation of Class B Interests is solely reserved to the Manager) or 2.3 hereof.
- The Members shall have the authority to vote on the matters provided in this Article and specifically provided elsewhere in this Agreement (see summary of voting rights in Article 7.4).

## 6.5 Employment of Affiliated or Unaffiliated Service Providers

The Company may employ Affiliated or unaffiliated service providers, including, but not limited to real estate brokers, engineers, contractors, architects, title or escrow companies, attorneys, accountants, bookkeepers, property inspectors, etc., as necessary to facilitate the acquisition, management, and sale of its Properties. Such services will be employed in the locale of each Property on terms that are deemed to be commercially reasonable in the geographic area where each Property is located, and provided that all contracts with Affiliated Persons are on terms at least as favorable to the Company as could be obtained through arms-length negotiations with unrelated third parties.

## 6.6 Delegation of Duties

The Manager shall have the right to perform or exercise any of its rights or duties under this Agreement through delegation to or contract with Affiliated or unaffiliated service providers, agents, or employees of the Manager, provided that all contracts with Affiliated Persons are on terms at least as favorable to the Company as could be obtained through arms-length negotiations with unrelated third parties; and further provided that the Manager shall remain primarily responsible for the active supervision of such delegated work.

## 6.7 Consultation; Periodic Reports

The Manager agrees to use its best efforts at all times to keep the Members advised of material matters affecting the Company and to provide periodic reports to the Members on request, which may be oral or in written form at the Manager's discretion. Further, the Manager will be available for questions during normal business hours.

## 6.8 Manager's Reliance on Information Provided by Others

Unless the Manager has knowledge concerning the matter in question that makes reliance by the Manager unwarranted, the Manager is entitled to rely on information, opinions, reports, or statements, including but not limited to financial statements or other financial data, if prepared or presented by:

- One or more Members, Managers, employees, or contractors of the Company whom the Manager reasonably believes to be reliable and competent in the matter presented;

- Legal counsel, accountants, or other Persons as to matters the Manager reasonably believes are within the Person's professional or expert competence; or
- A committee of members or managers of which he or she is not a member if the Manager reasonably believes the committee merits confidence.

## 6.9 Fiduciary Duties of Manager

The fiduciary duties the Manager owes to the Company include only the duty of care, the duty of disclosure and the duty of loyalty, as set forth below. A Member has a right to expect that the Manager will do the following:

- Use its best efforts when acting on the Company's behalf,
- Not act in any manner adverse or contrary to the Company interests,
- Not act on its own behalf in relation to its own interests unless doing so is in the best interests of the Company and is fair and reasonable under the circumstances, and
- Exercise all of the skill, care, and due diligence at its disposal.

In addition, the Manager is required to make truthful and complete disclosures to the Company so that the Members can make informed decisions. The Manager is forbidden to obtain an advantage at the expense of any of the Members, without prior disclosure to the Company and the Members.

### 6.9.1 *Duty of Care and the 'Business Judgment Rule'*

Just as officers and directors of corporations owe a duty to their shareholders, the Manager is required to perform its duties with the care, skill, diligence, and prudence of like Persons in like positions. The Manager will be required to make decisions employing the diligence, care, and skill an ordinary prudent Person would exercise in the management of their own affairs. The 'business judgment rule' should be the standard applied when determining what constitutes care, skill, diligence, and prudence of like Persons in like positions; however, the Manager does not guarantee the return of the Members' Capital Contributions or the existence of profits from operations of the Company or the Properties.

### 6.9.2 *Duty of Disclosure*

The Manager has an affirmative duty to disclose material facts to the Company. Information is considered material if there is a substantial likelihood that a reasonable Investor would consider it important in making an investment decision. The Manager must not make any untrue statements to the Members and must not omit disclosing any material facts to the Members.

The Manager has a further duty to disclose conflicts of interest that may exist between the interests of the Manager and its Affiliates and the interests of the Company or any of the individual Members.

### 6.9.3 *Duty of Loyalty*

The Manager has a duty to refrain from competing with the Company in the conduct of the Company's business prior to the dissolution of the Company, except that the Members understand and acknowledge that the Manager has other interests and responsibilities that may compete for its time and resources, which shall not be considered a violation of this duty.

## 6.10 Limited Liability of the Members and the Manager

No Person who is a Member, Manager, or officer of the Company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Member, Manager, or officer of the Company, unless such Member, Manager or officer expressly agrees to be obligated personally for any or all of the debts, obligations, and liabilities of the Company (e.g., such as a loan guarantor, etc.).

## 6.11 Indemnification of the Manager and the Members

The Manager or a Member shall not be subject to any liability to the Company for the doing of any act or the failure to do any act authorized herein, provided it was performed in good faith to promote the best interests of the Company, including any liability, without limitation, of any Manager, Member, officer, employee, or agent of the Company, against judgments, settlements, penalties, fines, or expenses of any kind (including attorneys' fees and costs) incurred as a result of acting in that capacity.

Nothing in this section shall be construed to affect the liability of a Member of the Company (1) to third parties for the Member's participation in tortious conduct, or (2) pursuant to the terms of a written guarantee or other contractual obligation entered into by the Member (such as a loan guarantee, etc.).

### 6.11.1 *Indemnity of the Manager*

The Manager (including its members, officers, employees, and agents) are specifically excluded from personal liability for any acts related to the Company, whether they relate to internal disputes with Members, external disputes with third parties or regulatory agencies, etc., except for cases where a finding is made by a court of law or arbitrator that the Manager engaged in:

- Intentional misconduct including, but not limited to, a knowing violation of the law; or
- For liabilities arising under violation of the Securities Act of 1933 (the Securities Act), any regulations promulgated thereto, or any state securities laws (as such indemnification is against public policy per the SEC).

Except for these exclusions, the Company shall indemnify and hold harmless the Manager from and against any and all loss, cost, liability, expense, damage or judgment of whatsoever nature to or from any Person or entity, including payment for the Manager's defense (including

reasonable attorneys' fees and costs) arising from or in any way connected with the conduct of the business of the Company. See also Article 13.3.4 regarding attorneys' fees and costs related to internal disputes.

Further, each Member shall indemnify and hold harmless the Manager, its officers, shareholders, directors, employees and agents from and against any and all loss, cost, liability, expense, damage or judgment of whatsoever nature to or from any Person or entity, including reasonable attorneys' fees, arising from or in any way connected with any liability arising from that Member's misrepresentation(s) that it met the Suitability Standards established by the Manager for Membership in the Company prior to its admission as a Member.

## 6.12 Liability Insurance

The Company may, at the Manager's discretion, and as a Company expense, purchase and maintain insurance on behalf of the Company, the Manager, a Member, or employee(s) of the Company against any liability asserted against and incurred by the Company, the Manager, a Member, or employee in any capacity relating to or arising out of the Company's, Member's, Manager's, or employee's status as such. Such insurance may be in the form of Directors and Officers Insurance, Key Man Insurance, Employer's Liability Insurance, General Business Liability Insurance, and/or any other applicable insurance policy.

## 6.13 Manager Has No Exclusive Duty to Company

The Manager shall not be required to manage the Company as its sole and exclusive function and may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in other activities of the Manager or its members, or to the income or proceeds derived therefrom.

## 6.14 Company's Right to Offset Legal Expenses Pertaining to Member

The Company may offset from a Member's Distributions the amount of any legal fees or other expenses the Company or the Manager may incur in relation to such Member's personal or outside legal issues. The purpose of this clause is to allow the Company to be reimbursed from such Member's Distributions any costs it incurs responding to discovery requests or other orders related to a lawsuit, bankruptcy, divorce, judgment, regulatory investigation, etc., pertaining to such Member, so long as the Company and/or the Manager itself is not a named party.

# 7. Rights and Obligations of Members

## 7.1 Limitation of Liability

Each Member's liability shall be limited to the extent allowable by the Act and other applicable law. The debts, obligations and liabilities of the Company, whether arising from contract, tort or otherwise, shall be solely the debts obligations and liabilities of the Company. No Member or



Manager shall be obligated personally for such debt, obligation, or liability of the Company, solely by reason of being a Member of the Company.

## 7.2 Company Debt Liability; Ownership May Trigger Debt Liability

A Member will not be personally liable for any debts or Losses of the Company beyond such Member's respective Capital Contributions to the Company, except as otherwise required by law or any personal guarantees or financing requirements.

Depending on lender requirements, however, some or all of the Members may be required to sign personal guarantees for financing of a Property and may be requested to provide financial documentation of their individual financial condition to the institutional lender. For instance, certain institutional lenders require Investors owning more than twenty percent (20%) of the Interests in the Company to be underwritten during the loan approval process and to execute loan documents. Members who do not wish to become subject to this requirement should acquire less the percentage of the total Interests that will trigger this requirement, after confirming such amount with the Manager and Lender.

## 7.3 Members' Obligation of Good Faith and Fair Dealing

Each Member (and the Manager) shall discharge their duties to the Company and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

## 7.4 Authority of the Members; Summary of Voting Rights

Pursuant to this Agreement, the Manager has absolute powers to operate the business of the Company. The Members have authority to vote only on the specific decisions authorized in various provisions of this Agreement and summarized below.

### 7.4.1 *Votes Requiring Unanimous Approval of All Members*

Unanimous Consent of all Members, both Class A and Class B, is required for any of the following matters:

- To authorize an act that is not in the ordinary course of the business of the Company; and
- To amend the Operating Agreement or make substantive amendments to this Agreement (per Article 15.2).

### 7.4.2 *Votes Requiring Approval of 75% of the Class A Members' Interests*

Members who own seventy-five percent (75%) of the Class A Interests (other than any Class A Interests retained by the Manager or its Affiliates) must affirmatively vote to approve any of the following actions:

- To issue a Notice to Perform to the Manager; and

- To remove the Manager for Good Cause (see Article 8.2 and 8.3).

#### *7.4.3 Votes Requiring Approval of a Majority of Interests of Class A Members*

A vote of a majority of the Percentage Interests of the Class A Members is required to:

- Fill a vacancy after the Manager has resigned or been removed (see Article 8).

#### *7.4.4 Votes Requiring Approval of a Majority of Interests of all Members*

An affirmative vote of a Majority of Interests of all Members is required to:

- Approve any Major Decision (see Article 6.4);
- Approve an action which will cause the Company to liquidate, terminate or dissolve except for a decision to purchase or to sell a Property, which may be affected solely by the Manager (see Article 14.1);
- Exchange a Property for another under Code section 1031 (see Appendix B, Section 3.3); and
- Any other matter that a Member or the Manager wishes to put to a vote of the Members.

### 7.5 Participation

Except as otherwise set forth herein, the Members shall not participate in the day-to-day management of the business of the Company.

### 7.6 Deadlock

Unless otherwise expressly set forth herein, in the event the Members are unable to reach agreement on or make a decision with respect to any matter on which the Members are entitled to vote (as summarized in Article 7.4), the matter shall be subject to the Internal Dispute Resolution Procedure described in Article 13 hereof.

## **8. Resignation or Removal of the Manager**

### 8.1 Resignation

The Manager of the Company may resign at any time by giving written notice to the Members. However, this may require approval of a lender if any loan in effect at the time of resignation was conditioned on the qualifications of the Manager or its members. The resignation of the Manager shall take effect sixty (60) days after receipt of notice thereof or at such other time as shall be specified in such notice, or otherwise agreed between the Manager and Members. The acceptance of such resignation shall not be necessary to make it effective.

## 8.2 Removal Process; Notice to Perform

Prior to initiating a removal action per this Article for Good Cause, the Class A Members representing seventy-five percent (75%) of the Percentage Interests (other than any Class A Interests retained by the Manager or its Affiliates) shall issue a Notice to Perform to the Manager in accordance with the notice provision in Article 15.1 hereof. Such Notice to Perform shall describe the matters of concern to the Class A Members and shall give the Manager up to sixty (60) days to correct the matter of concern to the satisfaction of the Class A Members. If the Manager fails to respond to the concerns or demands contained in such Notice to Perform to the satisfaction of the Class A Members, then;

Upon the affirmative vote of seventy-five percent (75%) of the Class A Percentage Interests, the Manager may be immediately removed, temporarily or permanently, for Good Cause as determined by: a) the Members holding the requisite Interests, or (b) by an arbitrator or judge per Article 13.5.3. *Note, however, that removal of the Manager may require pre-approval of a lender or substitution of a loan guarantor if any loan was conditioned on the qualifications of the Manager or its members.*

## 8.3 Reasons for Removal; Good Cause Defined

Per Article 6.2, the previous Manager must serve until a new Manager is hired or elected. The Class A Members hereby agree that any right of removal shall be exercised only in good faith. "Good Cause" shall include only the following, as determined by a vote of at least seventy five percent (75%) of the Class A Members' Interests:

- Any of the acts described in Article 6.11 hereof;
- A breach of a Manager's duties or authority hereunder;
- Willful or wanton misconduct;
- Fraud;
- Bad faith;
- Death or disability wherein the Manager (or any of the members of the Manager with authority to Manage the Company) dies or becomes physically, mentally, or legally incapacitated such that it can no longer effectively function as the Manager of the Company or the dissolution, liquidation or termination of any entity serving as the Manager and no other member, officer or director of the Manager is willing or able to effectively perform the Manager's duties;
- Disappearance wherein no member of the Manager returns phone calls and/or written correspondence (including email) for more than thirty days (30) without prior notice of their collective anticipated absence, or failure to provide the Members with new contact information;

- Issuance of a legal charging order and/or judgment by any judgment creditor against the Manager's Interest in Cash Distributions or Fees from the Company;
- A finding by a court of law or arbitrator that the Manager committed any of the acts described in Article 6.11, for which the Manager is specifically not indemnified by the Company; or
- The Manager becomes subject to a "disqualifying event" at any time during operation of the Company (as those terms are defined in Regulation D, Rule 506(d)).

## 8.4 Removal Notice Requirements

Notice of the Manager's removal shall be provided in a Removal Notice, duly executed by Class A Members having seventy-five percent (75%) of the Percentage Interests. The Removal Notice shall be sent via express or overnight delivery to the removed Manager's record place of business. The Removal Notice shall designate the newly appointed manager who shall succeed the removed Manager, and/or a Member to whom the removed Manager must convey all documents and things necessary to continue management of the Company.

Within fifteen (15) business days of such Removal Notice, or such reasonable extension as the removed Manager shall request (which shall in no case exceed thirty (30) calendar days), the removed Manager shall voluntarily surrender all documents, books, records, bank accounts, and things (Documents and Things) related to management of the Company to the newly appointed Manager or designated Member. If the removed Manager fails to voluntarily comply with this Article, the Company may seek reimbursement for any costs associated with collecting such Documents and Things from the removed Manager, by deducting the costs, including attorneys' fees and other necessary costs of collection (on production of receipts therefore) or forensic reconstruction, from any Distributable Cash or Fees the removed Manager may otherwise be entitled to collect as described in Article 4.

## 8.5 Effect of Resignation or Removal on Manager's Cash Distributions and Fees

In the event of removal or resignation of the initial Manager, Distributions and Fees due the Manager will be re-allocated between the former and new Manager as of the removal or resignation date, as described below:

- **Expense Reimbursements:** Regardless of resignation or removal, the initial Manager will still be entitled to reimbursement for its costs related to startup and operation, and any interest due thereon, as described in Article 5.1, even if the amount due remains uncollected at the time of removal.
- **Manager's Organization and Due Diligence Fee/Acquisition Fee:** The Manager in office at the time each Property is acquired will be paid this Fee. See Article 5.2.1.
- **Asset Management Fee:** The asset management Fee described in Article 5.2.2 will be prorated between the initial Manager and the new manager.

- **Property Management Fees:** (owed to the Manager or an Affiliate of the Manager, if applicable) will be prorated between the Manager (or an Affiliate of the Manager) and the new Manager as of the resignation or removal date if an affiliated Property Manager is concurrently removed. See Articles 5.2.3 and 8.4.1.
- **Refinance Fee:** The refinance Fee for each Property will be paid to the Manager in office at the time the Property is refinanced. See Article 5.2.4.
- **Disposition Fee:** The disposition Fee for each Property will be paid to the Manager in office at the time the Property is sold. See Article 5.2.5.
- **Distributions or Membership Interests of Class B Members,** will be unaffected by removal or resignation of Axis Income Fund Management, LLC, as the Manager. See Articles 1.5 and 4.

A removed Manager shall be entitled to copies of all financial statements provided to the Members for so long as it has continued rights to Fees or Distributions. To the extent a member of the removed Manager or the Manager itself remains Member of the Company, it shall retain all rights of any other Member entitled to participate in Cash Distributions, telephone calls, voting, and/or correspondence between the replacement Manager and the Members.

## 8.6 Applicability of Internal Dispute Resolution Procedure

Nothing in Article 13 (i.e., the Internal Dispute Resolution Procedure) shall prevent any Manager from being immediately removed pursuant to the procedures described in this Article. However, the removed Manager may request application of the Internal Dispute Resolution Procedure (as described in Article 13) to settle disputes related to possible reinstatement or a determination of the amount(s) of Distributable Cash or Fees to which the removed Manager may be entitled.

The removed Manager shall have only ninety (90) days from: (a) removal, or (b) from receipt of Fees/Distributable Cash from which deductions have been taken, to invoke the Internal Dispute Resolution Procedure described in Article 13 for resolution of any dispute related to such matters. The removed Manager's failure to provide a written objection (per the provisions of Article 13) within ninety (90) days of the occurrence (a) or (b) above shall be deemed acceptance.

## 8.7 Vacancies

In the event the Manager has resigned or has been removed or has otherwise ceased to be Manager, the vacancy shall be filled upon the affirmative vote of a Majority of Interests of the Class A Members. A Manager elected to fill a vacancy shall be elected for the unexpired term of its predecessor and shall hold office until the expiration of such term and until the replacement Manager's successor shall be elected and shall qualify or until his earlier death, resignation, removal, liquidation, dissolution or termination.

## **9. Meetings of Members**

### **9.1 Annual Meeting**

No Annual Meeting of the Members is required.

### **9.2 Meetings**

The Manager may call a meeting of the Members at any time and for any purpose. Whenever it wishes to call it meeting, the Manager shall give notice of the Meeting to the Members.

### **9.3 Place of Meetings**

The Manager may designate any place, either within or outside of the State of Florida, as the place of meetings of the Members.

### **9.4 Notice of Meetings**

Except as provided in Article 9.5 below, written notice via email stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be given at least three (3) days and not more than thirty (30) days before the date of the meeting. A vote taken at a meeting with less than three (3) days' notice will only be valid if the requisite percentage of Members provide subsequent written consent.

### **9.5 Meeting of all Members**

If all of the Members meet at any time and place, either within or outside of the State of Florida, and consent to the holding of a meeting at such time and place in writing, such meeting shall be valid without call or notice, and at such meeting, a lawful vote may be taken.

### **9.6 Record Date**

For the purpose of determining: 1) Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof; 2) Members entitled to receive payment of any Cash Distribution; or 3) to make a determination of Members for any other purpose; the date on which notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members.

### **9.7 Quorum**

Members representing a Majority of Interests, whether represented in person or by proxy, shall constitute a quorum at any duly noticed meeting of Members (per Article 9.4). In the absence of a quorum at any such meeting, a majority of the Members present may continue or adjourn (i.e., reschedule) the meeting for a new date to occur within thirty (30) days. A notice of the adjourned meeting shall be given to each Member of record entitled to vote.

## 9.8 Manner of Acting

An affirmative vote of the requisite Interests (see summary in Article 7.4) shall be considered an act of the Members on such matters as they are entitled to vote. Consent transmitted by electronic transmission (email) by a Member or Person authorized to act for a Member shall be deemed to have been written and signed by the Member, regardless of whether they appeared at a meeting.

## 9.9 Proxies

At all meetings of Members, a Member may vote in person, by proxy executed in writing by the Member, or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Manager of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxies.

## 9.10 Action by Members without a Meeting

Action required or permitted to be taken at a meeting of Members may only be taken without a meeting if the action is approved by written consent of the requisite Percentage Interests required to approve the action taken, signed by each Member casting a vote, and delivered to the Manager for inclusion in the minutes or filing with the Company records.

## 9.11 Electronic Meetings

Meetings of Members may be held by means of a conference telephone call so that all Persons participating in the meeting can hear each other. Participation in a meeting held by conference telephone call shall constitute presence of the Person at the meeting.

## 9.12 Waiver of Notice

When any notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

# **10. Fiscal Year, Books and Records, Bank Accounts, Tax Matters**

## 10.1 Fiscal Year

The Company, for accounting and income tax purposes, shall operate on a Fiscal Year ending December 31 of each year, and shall make such income tax elections and use such methods of depreciation as shall be determined by the Manager. The books and records of the Company will be kept on a cash basis in accordance with sound accounting practices to reflect all income and expenses of the Company.

## 10.2 Company Books and Records

Copies of all accounts, books, and other relevant Company documents (as further specified below) will be kept at the office of the Manager for at least seven (7) years:

- A current list of the full name and last known business or residence street address of each Member and of each holder of an Economic Interest in the Company, together with the contribution and the share in Profits and Losses of each Member and holder of an Economic Interest, and any “agreed value” attributable to such Interest, which list shall exclude confidential information about the Members or the Manager;
- Copies of records that would enable a Member to determine the relative voting rights, if any, of the Members;
- A current list of the full name and last known business or residence address of the Manager;
- A copy of this Agreement and any amendments thereto or prior executed versions thereof, together with any powers of attorney pursuant to which the Agreement or any amendments thereto were executed;
- Copies of the Company's federal, state, and local income tax or information returns and reports, if any, and any substantiating information for such returns and reports, until the statute of limitations of such returns and reports;
- Copies of any financial statements of the Company, if any, for the seven (7) most recent years; and
- The books and records of the Company as they relate to the internal affairs of the Company for at least the current and past seven (7) Fiscal Years.

Further, the Company shall retain a copy of the Articles of Organization and all amendments thereto, together with any powers of attorney pursuant to which the Articles or any amendments thereto were executed, for as long as the Company is in existence.

A Member may:

- At the Member's own expense, inspect and copy any Company record upon reasonable request during ordinary business hours; and
- Obtain from time to time upon reasonable demand:
- True and complete information regarding the state of the business and financial condition of the Company;
  - Promptly after becoming available, a copy of the Company's federal, state, and local income tax returns, if any, for each year; and
  - Other information regarding the affairs of the Company as is just and reasonable.



As stated above, a Member shall have the right, during ordinary business hours, to inspect and copy the Company documents listed above at the Member's expense. But the Member must give seven (7) days' notice to the Manager of such Member's intent to inspect and/or copy the documents and may only inspect and copy such Company documents for a purpose reasonably related to the Member's Interest in the Company as approved by the Manager. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished. The Company may elect, at its option, to provide the requested document electronically.

To the extent allowed by law, the Manager shall honor requests of Members to keep their contact information confidential.

### 10.3 Bank Accounts

All funds of the Company shall be held in a separate bank account(s) in the name of the Company as determined by the Manager.

### 10.4 Reports and Statements

The Manager will prepare an annual information package that will be available on request by April 1<sup>st</sup> of each year. The annual information package will include such things as an annual operations update, financial statements, and a copy of the Company tax return, as applicable. However, the K-1 forms will be sent to all of the Members by March 15<sup>th</sup> unless the Company files an extension request to extend the due date of filing its partnership tax return.

To the extent allowed by law, the Manager shall keep the Members' financial identity and contact information confidential.

### 10.5 Tax Matters

The Manager shall serve as the partnership representative (Tax Representative) for purposes of Code sections 6221 through 6223. In the event such Tax Representative is no longer willing or able to serve in this capacity, the Manager shall appoint a new Tax Representative. See Appendix B, Section 5 for a more complete explanation.

## **11. Voluntary Transfer; Additional and Substitute Members**

This Article 11 pertains to all Interests in the Company.

### 11.1 Voluntary Withdrawal, Resignation or Disassociation Prohibited

A Member may not withdraw, resign or voluntarily disassociate from the Company, unless such Member complies with the transfer provisions set forth in this Article. The provisions of this

Article shall apply to all Voluntary Transfers of a Member's Interests. Involuntary Transfers are addressed in Article 12.

## 11.2 Admission of Additional Members

The Manager reserves the right to extend the Offering beyond the original Offering Period or to re-open the Offering to new Class A Members if: a) additional funds are needed for purposes related to the Property described herein, or b) the proceeds of the original Offering are insufficient to meet the Company's current requirements, in which case the Manager reserves the right to authorize the sale of new or additional Class A Units to new or existing Members, or to admit new Members whose Class or Interests may be equal or senior to the Class A Interests as necessary to raise the needed capita (see Article 2.3).

The initial Manager additionally reserves the sole and exclusive right to allocate Class B Interests and admit new Class B Members without approval of Class A Members. If the initial Manager is removed, the Class B Interests may not be further altered except by unanimous vote of the Class B Members or for cause, as described in Article 12.1 or 12.2 hereof.

## 11.3 Transfer Prohibited Except as Expressly Authorized Herein

No Member may voluntarily, involuntarily, or by operation of law assign, transfer, sell, pledge, hypothecate, or otherwise dispose of (collectively transfer) all or part of its Interest in the Company, except as is specifically permitted by this Agreement or with the approval of the Manager and provided the following conditions are met. Any Voluntary Transfer made in violation of this Article shall be void and of no legal effect.

- Voluntary Transfer will not require registration of Interests under any federal or state securities laws;
- The transferee delivers to the Company a written instrument agreeing to be bound by the terms of this Agreement.
- Such Voluntary Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;
- The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number and (ii) the transferee's initial tax basis in the transferred Economic Interest; and
- Such Voluntary Transfer will not result in the Company being taxed as other than partnership for federal or state income tax purposes.

Further, in no event shall any Voluntary Transfer be made within one (1) year of the initial sale (except for a sale to the Company as described in Article 11.5.1 below) of the Interests proposed for transfer unless the Transferor provides a letter from an attorney, acceptable to the Manager, stating that in the opinion of such attorney, the proposed transfer is exempt from registration under the Securities Act and under all applicable state securities laws or is otherwise compliant

with Rule 144 or Regulation S, such that the applicable distribution compliance period has expired prior to an offer or sale. The Manager is legally obligated to refuse to honor any transfer made in violation of this provision.

## 11.4 Conditions for Permissible Voluntary Transfer; Substitution

A permitted transfer of any Member's Interest shall only be granted as to the Member's Economic Interest unless the Manager accepts a permitted transferee as a Substitute Member. A permitted transferee shall become a Substitute Member only on satisfaction of all of the following conditions:

- Filing of a duly executed and acknowledged written instrument of assignment in a form approved by the Manager specifying the Member's Percentage Interest (including what Class of Interests it constitutes, its rights to future Distributions and Percentage Interests) being assigned and setting forth the intention of the assignor that the permitted assignee succeed to the assignor's Economic Interest (or the portion thereof) and/or its Interest as a Member;
- Execution, acknowledgment and delivery by the assignor and assignee of any other instruments reasonably required by the Manager including an agreement of the permitted assignee to be bound by the provisions of this Agreement; and
- The Manager's approval of the transferee's or assignee's admission to the Company as a Substitute Member and concurrent and complete Disassociation of all of the Membership and Economic Interests of the Transferor.

Furthermore, any Substitute Member must be a Person who meets the original qualification requirements for Investors (as defined in the Memorandum), and must sign this Agreement, and must also complete the Offeree Questionnaire and sign the Subscription Agreement (Exhibit 3 to the Memorandum).

### 11.4.1 *Transfer of a Member's Interest to an Affiliate*

Nothing in this Article shall prevent a Member from transferring its entire Membership Interest (Economic and voting rights, etc.) or any portion thereof to an Affiliate (as defined in Appendix C). Approval of Substituted Membership of an Affiliate shall not be unreasonably withheld by action of the Manager on the delivery of all requested documents necessary to accomplish such a transfer. However, any subsequent conveyance or transfer of ownership interests within the Affiliate so that it no longer meets the definition of an Affiliate with respect to the original Member, shall make its membership in the Company subject to Disassociation (per Article 12) by the Manager. Unless the Affiliate requests and is approved by the Manager as a Substitute Member, an unauthorized Affiliate shall have only the Economic Interest of the former Member.

## 11.5 Voluntary Transfer; Right of First Refusal

### 11.5.1 *Notice of Sale; Company & Member Option Period*

In the event any Member (a Selling Member) wishes to sell its Interest, it must first present a written offer to sell (a "Notice of Sale") its Interests to the Company at the proposed price and other terms and conditions it may desire. If the Notice of Sale is made pursuant to a bona fide offer from a third party, the Notice of Sale shall disclose the identity of the proposed transferee, the quantity or percentage of offered Interests, the agreed price, the terms and conditions, and any other material facts relating to the proposed sale. If the Member has a proposed purchaser that is qualified and acceptable to the Manager, the Manager shall allow the sale to proceed on the terms and conditions offered by the third party, with fees to be split between them as agreed by the parties to the transaction.

**Class A Option Period.** If the Selling Member does not have a proposed purchaser, the Class A Members shall have an option period of seven (7) days following the Manager's receipt of the Notice of Sale, in which they may purchase all of the offered Interests on the terms provided in the Notice of Sale or such other terms as may be negotiated between the parties. The Manager may establish a minimum dollar amount for any offers from Members to purchase. Purchase offers will be accepted by the Manager from the Class A Members on a first come, first served basis. The Manager will coordinate the transaction.

**Class B Option Period.** If the Class A Members do not purchase all of the Interests, the Class B Members may, but are not obligated to, purchase any unsold Class A Units offered by the Selling Member. If the Class B Members desire to purchase all or a portion of the offered Interests, the Manager shall notify the Selling Member of such election within fourteen (14) days of the Notice of Sale.

In any purchase by the Members or the Company described above, the Manager will automatically adjust the Membership Interests of the Purchasing Members to reflect the respective Percentage and voting Interests and Class of Interests held by each Member, and the Manager shall revise Appendix A (attached hereto), as appropriate to reflect such adjustment.

### 11.5.2 *Costs of Conveyance for Voluntary Transfer*

In the event that the Manager and/or the Members elect to purchase as provided in this Article, the cost of such transaction, including without limitation, recording fees, escrow fees, if any, and other fees, (excluding attorneys' fees which shall be the sole expense of the party who retained them) shall be the responsibility of the Selling Member. The Manager may charge the Selling Member a processing fee of One Thousand Dollars (\$1,000) for administering any voluntary transfer of a Member's Interest. The Purchasing Members shall each contribute their respective share of the transaction costs in proportion with their share of the purchased Interest. The Selling Member shall deliver all appropriate documents of transfer for approval by the Manager, at least three (3) days prior to the closing of such sale for its review and approval.

From and after the date of such closing, whether the sale is made to the Members, the Manager, or to the third party, the Selling Member shall have no further Interest in the Assets or income of the Company and, as a condition of the sale, the Person(s) or entities purchasing the Interests shall indemnify and hold harmless the Selling Member from and against any claim, demand, loss, liability, damage or expense, including without limitation, attorneys' fees arising from the subsequent operation of the Company.

### *11.5.3 Rights and Interests of Voluntary Transferee; Adjustment of Voting Rights*

If a Member transfers its Interest to a third-party transferee pursuant to this Article, such transferee shall not succeed to the Member's Economic Interest unless and until it complies with the provisions of Article 11.4 and is approved by the Manager as a Substitute Member. Until such time, if ever, that the third-party transferee becomes a Substitute Member, the *voting* Interests of the Remaining Members (i.e., all Members other than the Selling Member) will be increased proportionately as if the Selling Member's Interest had been liquidated by the Company.

The obligations, rights and Interests of the Selling, purchasing, and any Substitute Members shall inure to and be binding upon the heirs, successors and permitted assignees of such Members subject to the restrictions of this Article. A third-party transferee shall have no right of action against the Manager or the Company for not being accepted as a Substitute Member.

## **12. Involuntary Transfer; Disassociation**

### **12.1 Disassociation for Cause**

A Member may be disassociated (i.e., expelled) from the Company for *Cause* (defined in the bullets below) pursuant to a judicial determination, or upon a written finding by the Manager or applicable judicial body that such Member:

- Engaged in wrongful conduct that adversely and materially affected the Company's business;
- Willfully or persistently committed a material breach of this Agreement;
- Engaged in conduct relating to the Company's business, which makes it not reasonably practicable to carry on the business with the Member; or
- Engaged in willful misconduct related to its Membership in the Company.

### **12.2 Disassociation by Operation of Law**

Additionally, a Member may be disassociated by operation of law, affected solely by action of the Manager, upon the occurrence of any of the following triggering events:

- Upon Voluntary or Involuntary Transfer of all or part of a Member's Economic Interest;

- Dissolution, suspension, or failure to maintain the legal operating status of a corporation, partnership or limited liability company that is a Member of the Company;
- Any Member who meets the definition of a "covered person" and becomes subject to a "disqualifying event" at any time during operation of the Company (as those terms are defined in Regulation D, Rule 506(d)) may automatically be, by action of the Manager: a) disassociated, or b) stripped of its voting rights (if an Investor), as appropriate and necessary to preserve the Company's securities exemption under Regulation D, Rule 506.
- In the case of a Member that is a legal entity, the Member's:
  - Becoming a debtor in Bankruptcy;
  - Executing an assignment of all or substantially all of its Economic Interest for the benefit of creditors;
  - The appointment of a trustee, receiver, or liquidator of the Member or of all or substantially all of the Member's property including its Interest in the Company pursuant to an action related to the Member's insolvency; or
- In the case of a Member who is an individual:
  - The Member's death;
  - Becoming a debtor in Bankruptcy;
  - The appointment of a guardian or conservator of the property of the Member; or
  - A judicial determination of incapacity or other such determination indicating that the Member has become incapable of performing its duties under this Agreement;
- In the case of a Member that is a trust or trustee of a trust, distribution of the trust's entire rights to receive Distributions from the Company, but not merely by reason of the substitution of a successor trustee;
- In the case of a Member that is an estate or personal representative of an estate, distribution of the estate's entire rights to receive Distributions from the Company, but not merely the substitution of a successor personal representative; or
- Termination of the existence of a Member if the Member is not an individual, estate, or trust, other than a business trust.

### 12.3 Effect of Disassociation

Immediately on mailing of a notice of Disassociation sent by the Manager to a Member's last known address, unless the reason for Disassociation can be and is cured within sixty (60) days, a Member will cease to be a Member of the Company and shall henceforth be known as a Disassociated Member. Any successor in Interest who succeeds to a Member's Interest by operation of law (per Article 12.2) shall henceforth be known as an Involuntary Transferee.

Subsequently, the Disassociated Member's right to vote or participate in management decisions (as summarized in Article 7.4) will be automatically terminated. A Disassociated Member (or its legal successor) will continue to receive only the Disassociated Member's Economic Interest in the Company, unless the Disassociated Member/Involuntary Transferee elects to sell its Interest to the Manager or Members (Purchasing Members) or to a third party buyer (Voluntary Transferee) following the procedures described in Article 11.5; and/or a Voluntary or Involuntary Transferee seeks admission and is approved by the Manager as a Substitute Member (per Article 11.4).

Until such time, if ever, that the Manager approves the transfer of the entire Disassociated Member's Membership Interest to the Purchasing Members or a Substitute Member, the voting interests of the Remaining Members will be proportionately increased as necessary to absorb the Disassociated Member's voting Interests.

If a Member objects to Disassociation, they will be bound to resolve the dispute in accordance with the Internal Dispute Resolution Procedure described in Article 13, unless the reason for the Disassociation can be resolved within sixty (60) days to the satisfaction of the Manager, in which case their full Membership Interest will be reinstated. If there is no Involuntary Transferee, and no third-party buyer is found and the Manager or Remaining Members do not wish to purchase the Disassociated Member's Interest, the Disassociated Member will only be entitled to receive its Economic Interest (no voting rights), indefinitely, until such time as the Company is dissolved.

## 12.4 Sale and Valuation of a Disassociated Member's Interest

If no outside buyers can be found and the Disassociated Member still desires to sell its Interest, which the Remaining Members and/or Manager (Purchasing Members) wish to purchase, the buyout price for the Disassociated Member's Interest may be determined using one of the following methods:

- **Negotiated Price:** First, if the Purchasing Members or legal representative of the Disassociated Member can agree on a negotiated price for the Interest, then that price will be used; if not,
- **Estimated Market Value Within 12 Months:** Second, the Manager may annually determine the Estimated Market Value of the Company and report it to the Members (per Article 6.3). An Estimated Market Value calculated by the Manager in any commercially accepted manner within the last twelve (12) months shall conclusively be used to determine the value of a Disassociated Member's Interest. The purchase price shall be the product of the Disassociated Member's Percentage Interest in the Company and the Estimated Market Value of the Company.
- **Appraisal Method:** Third, if both of the above methods fail, the price for a Disassociated Member's Interest shall be determined by appraisal of the Company by one or more independent, certified commercial business appraisers currently operating in the geographic area of each Property, as follows:

- The Disassociated Member shall hire and pay the first appraiser, who shall provide an Estimated Market Value for the Company. If acceptable to the parties, this Estimated Market Value will be used to calculate the value of the Disassociated Member's Interest.
- If the first appraiser's valuation is unacceptable, the Purchasing Members may hire their own appraiser and the average of the two appraisals (if within twenty percent (20%)) may be used to determine the value of the Company on which the purchase price will be based. If the two appraisals differ by more than twenty percent (20%) and the parties still cannot agree on the value, then,
- A third appraisal may be obtained (at the option of either party), the cost of which will be split between the Purchasing Members and the Disassociated Member. The average of the two appraisals closest in value will be conclusively used to establish the Estimated Market Value of the Company on which the value of the Interest will be based.

## 12.5 Closing

Unless other terms have been agreed between the Disassociated and Purchasing Members, the following terms shall apply to closing of a Disassociated Member's Interest. After determining value (per Article 11.5 or 12.4 above), the Purchasing Members shall give written notice fixing the time and date for the closing. The closing shall be conducted at the principal office of the Company or other agreed location on the date not less than thirty (30) days nor more than sixty (60) days after the date of such notice, or in the event of Bankruptcy, any request for an extension by any Bankruptcy Court having jurisdiction.

## 12.6 Payment for a Disassociated Member's Interest

At closing, the Purchasing Members shall pay to the Disassociated Member by certified or bank check an amount equal to the determined value of the Disassociated Member's Interest, or, if such value shall be determined to be zero or another amount pursuant to an agreement of the Members, shall deliver an executed copy of such agreement or a copy of such appraisal report(s), or a memorandum of the negotiated value (per Article 11.4 above) as applicable.

Notwithstanding the foregoing, at the option of the Purchasing Members, the purchase price may be paid by the delivery of its promissory note in the principal amount of the purchase price, in twelve (12) equal biannual installments at five percent (5%) simple, annual interest, unless otherwise agreed between the Disassociated Member and the Manager. Simultaneously therewith the Disassociated Member shall execute, acknowledge and deliver to the Purchasing Members such instruments of conveyance, assignment and releases as shall be necessary or reasonably desirable to convey all of the right, title and Interest of the Member and the Assets thereof.

Because of the unique and distinct nature of an Interest in the Company, it is agreed that the Purchasing Members' damages would not be readily ascertainable if they elect to purchase the Disassociated Member's Interest as aforesaid and the conveyance thereof were not



consummated, and, therefore, in such case the Purchasing Members shall be entitled to the remedy of specific performance in addition to any other remedies that may be available to them in law or in equity.

### **12.7 Transfer of Economic Interest; Rights of an Involuntary Transferee**

If the Purchasing Members do not elect to purchase the Interest of a Disassociated Member as provided in Articles 12.4 through 12.6, or if by operation of law the Economic Interest of the Disassociated Member transfers to an Involuntary Transferee, the Manager shall hereby be granted power of attorney by the Disassociated Member to execute such documents as may be necessary and requisite to evidence and cause the transfer only of the Disassociated Member's Economic Interest to the Involuntary Transferee, as applicable and appropriate for the circumstances.

An Involuntary Transferee shall not be deemed a Member until such time if ever, that they seek admission and are approved as a Substitute Member(s). Until such time, they shall only succeed to the Economic Interest of the Disassociated Member, including the right to any Distributions and a return of the Disassociated Member's Unreturned Capital Contributions, if applicable, which shall be distributed only if and when such Distributions or return of Capital Contributions shall become due per the terms of this Agreement. Any Distributions that may be due a Disassociated Member shall be held in trust and no Distributions shall be made to an Involuntary Transferee until it produces and executes such documentation as the Manager deems necessary to evidence the Transfer of the Disassociated Member's Economic Interest, and to indemnify the Company and the Manager for any liability related to making Distributions directly to the holder of the Economic Interest.

Any further assignment of the Disassociated Member's Economic or Membership Interest, or any request of an Involuntary Transferee to succeed to the Disassociated Member's full Membership Interest (i.e., to become a Substituted Member in the Company), shall be subject to approval of the Manager.

## **13. Internal Dispute Resolution Procedure**

Because the nature of the Company is to generate Profits on behalf of its Members, it is imperative that one Member's dispute with the Manager and/or other Members is not allowed to diminish the Profits available to other Members or resources necessary to operate the Company. Litigation could require diversion of Company Profits to pay attorneys' fees or could tie up Company funds necessary for operation of the Company or the Properties, impacting the profitability of the investment for all Members. The only way to prevent such needless expense is to have a comprehensive Internal Dispute Resolution Procedure (Procedure) in place, to which each of the Members have specifically agreed in advance of membership in the Company. The Procedure described below requires an aggrieved party to take a series of steps designed to amicably resolve a dispute on terms that will preserve the interests of the Company and the other non-disputing Members, before invoking a costly remedy, such as arbitration.

In the event of a dispute, claim, question, or disagreement between the Members or between the Manager and one or more Members arising from or relating to this Agreement, the breach thereof, or any associated transaction, or to interpret or enforce any rights or duties under the Act (hereinafter Dispute), the Manager and Members hereby agree to resolve such Dispute by strictly adhering to the Procedure provided below. The following Procedure has been adapted for purposes of this Agreement from guidelines and rules published by the American Arbitration Association (AAA):

### 13.1 Notice of Disputes

Written notice of a Dispute must be sent to the Manager or Member by the aggrieved party as described in the notice requirements of Article 15.1 below.

### 13.2 Negotiation of Disputes

The parties hereto shall use their best efforts to settle any Dispute through negotiation before resorting to any other means of resolution. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties. If, within a period of sixty (60) days after written notice of such Dispute has been served by either party on the other, the parties have not reached a negotiated solution, then upon further notice by either party, the Dispute shall be submitted to mediation administered by the AAA in accordance with the provisions of its Commercial Mediation Rules. The burden is on the complaining party to initiate each next step in this Procedure as provided below.

### 13.3 Mandatory Alternative Dispute Resolution

On failure of negotiation provided above; mediation, and as a last resort, binding arbitration shall be used to ultimately settle the Dispute. The following provisions of this Article 13 shall apply to any subsequent mediation or arbitration.

**Exception:** On unanimous consent of all parties to a Dispute, the disputing party may initiate a small claims action or litigation in lieu of mandatory mediation and arbitration. The parties shall further unanimously determine jurisdiction and venue. In any small claims action or litigation, the local rules of court shall apply in lieu of the remaining provisions of this Article.

#### 13.3.1 *Preliminary Relief*

Any party to the Dispute may seek preliminary relief at any time after negotiation has failed, but prior to arbitration, in accordance with the Optional Rules for Emergency Measures of Protection of the AAA Commercial Arbitration Rules and Mediation Procedures. The AAA case manager may appoint an arbitrator who will hear only the preliminary relief issues without going through the arbitrator selection process described in Article 13.5.1.

### 13.3.2 *Consolidation*

Identical or sufficiently similar Disputes presented by more than one Member may, at the option of the Manager, be consolidated into a single Procedure.

### 13.3.3 *Location of Mediation or Arbitration*

Any mediation or arbitration shall be conducted in State of Florida and each party to such mediation or arbitration must attend in person.

### 13.3.4 *Attorneys' Fees and Costs*

Each party shall bear its own costs and expenses (including their own attorneys' fees) and an equal share of the mediator or arbitrators' fees and any administrative fees, regardless of the outcome; however, if the Manager is a party, its legal fees shall be paid by the Company (per the indemnification provision described in Article 6.11).

**Exception:** The Company may reimburse a Member for attorneys' fees and costs in any legal action against the Manager or the Company in which the Member is awarded such fees and costs as part of a legal action.

### 13.3.5 *Maximum Award*

The maximum amount a party may seek during mediation or be awarded by an arbitrator is the amount equal to the party's Unreturned Capital Contributions and any Cash Distributions or interest to which the party may be entitled. An arbitrator will have no authority to award punitive or other damages.

### 13.3.6 *AAA Commercial Mediation or Arbitration Rules*

Any Dispute submitted for mediation or arbitration shall be subject to the AAA's Commercial Mediation or Arbitration Rules. If there is a conflict between the Rules and this Article, the Article shall be controlling.

## 13.4 **Mediation**

Any Dispute that cannot be settled through negotiation as described in Article 13.2, may proceed to mediation. The parties shall try in good faith to settle the Dispute by mediation, which each of the parties to the Dispute must attend in person, before resorting to arbitration. If, after no less than three (3) face-to-face mediation sessions, mediation proves unsuccessful at resolving the Dispute, the parties may then, and only then, resort to binding arbitration as described in Article 13.5.

#### *13.4.1 Selection of Mediator*

The complaining party shall submit a Request for Mediation to the AAA. The AAA will appoint a qualified mediator to serve on the case. The preferred mediator shall have specialized knowledge of securities law, unless the Dispute pertains to financial accounting issues, in which case the arbitrator shall be a C.P.A., or if no such person is available, shall be generally familiar with the subject matter involved in the Dispute. If the parties are unable to agree on the mediator within thirty (30) days of the Request for Mediation, the AAA case manager will make an appointment.

If the initial mediation(s) does not completely resolve the Dispute, any party may request a different mediator for subsequent mediation(s) by serving notice of the request to the other party(is) for approval, and subject to qualification per the requirements stated above.

### **13.5 Arbitration**

Any Dispute that remains unresolved after good faith negotiation and three (3) failed mediation sessions shall be settled by binding arbitration.

#### *13.5.1 Limited Discovery*

Discovery shall be limited to only those documents pertaining to this Agreement, including the Memorandum (and any relevant Appendices or Exhibits), this Agreement, the Subscription Agreement, any written correspondence between the parties, and any other documents specifically requested by the Arbitrator as necessary to facilitate his/her understanding of the Dispute. The parties may produce witnesses for live testimony at the arbitration hearing at their own expense. A list of all such witnesses and complete copies of any documents to be submitted to the arbitrator shall be served on the arbitrator and all other parties within 45 days of the arbitration hearing, at the submitting party's expense.

#### *13.5.2 Findings of Arbitrator*

To resolve any ambiguity, this Article 13 does not in any way affect any party's ability to bring an action against the Company, or their respective officers and directors, for violations of federal securities laws.

If, in any action against the Manager, the selected or appointed arbitrator, or judge (if applicable) makes a specific finding that the Manager has violated securities laws or has otherwise engaged in any of the actions described in Article 6.11 for which the Manager will not be indemnified, the Manager must bear the cost of its own legal defense. The Manager must reimburse the Company for any such costs previously paid by the Company. Until the Company has been fully reimbursed, the Manager will not be entitled to receive any Fees or Distributions it may otherwise be due.

#### *13.5.3 Arbitration*

In this Resolution of Disputes provision:

- a) "You" and "your" mean the person entering into this Agreement, as well as any second person claiming through such first person;
- b) "We" and "our" and "us" mean Borrower and its respective parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as their officers, directors, and employees;
- c) Claim means any dispute, claim, or controversy (whether based on contract, tort, intentional tort, constitution, statute, ordinance, common law, or equity, whether pre-existing, present, or future, and whether seeking monetary, injunctive, declaratory, or any other relief) arising from or relating to this Agreement or the relationship between you and me (including claims arising prior to or after the date of this Agreement, and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class), and includes claims that are brought as counterclaims, cross claims, third party claims or otherwise, as well as disputes about the validity or enforceability of this Agreement or the validity or enforceability of this Article 13.

Any Claim may be resolved, upon the election of both parties, by binding arbitration administered by the American Arbitration Association, under the applicable arbitration rules of the administrator in effect at the time a Claim is filed ("Rules"). Class arbitrations and class actions are not permitted.

You can obtain the Rules and other information about initiating arbitration by contacting the American Arbitration Association at 1633 Broadway, 10th Floor, New York, NY 10019, (800) 778-7879, [www.adr.org](http://www.adr.org).

- a) Claims submitted for arbitration will be arbitrated by a single, neutral arbitrator, who shall be a retired judge or an attorney with at least ten years' experience. The selected or appointed arbitrator shall be selected from available candidates in Florida and shall have specialized knowledge of securities law, unless the Dispute pertains to financial accounting issues, in which case the arbitrator shall be a C.P.A. Further, the selected arbitrator must agree to sign a certification stating that they have read all of the documents relevant to this Agreement in their entirety, including the Memorandum, if applicable, and any relevant Appendices or Exhibits, this entire Agreement, and the Subscription Agreement.
- b) Each party shall bear its own attorney's, expert's and witness fees, which shall not be considered costs of arbitration; however, if a statute gives you the right to recover these fees, or fees paid to the administrator or arbitrator, then these statutory rights will apply in arbitration.
- c) Any in-person arbitration hearing will be held in Florida, or in such other location as the parties may mutually agree. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. § 1-16, ("FAA") and, if requested by either party, provide written reasoned findings of fact and conclusions of law. The arbitrator shall have the power to award any relief authorized under applicable law. Any appropriate court may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding except that: (i) any party may exercise any appeal right under the FAA; and (ii) any party may appeal any award relating to a claim for more than One Hundred Thousand Dollars (\$100,000) to a three-arbitrator panel appointed by the

administrator, which will reconsider de novo any aspect of the appealed award. The panel's decision will be final and binding, except for any appeal right under the FAA. Unless applicable law provides otherwise, the appealing party will pay the appeal's cost, regardless of its outcome.

- d) THE PARTIES AGREE THAT EACH MAY BRING ARBITRATION CLAIMS AGAINST THE OTHER ONLY IN OUR CAPACITY AS A SINGLE PERSON, OR AS A GROUP OF HOLDERS WITH RESPECT TO THE SAME OPERATING AGREEMENT AND SUBSCRIPTION AGREEMENT, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless the parties agree otherwise in writing, the arbitrator may not consolidate more than one person's claims. The arbitrator shall have no power to arbitrate any Claims on a class action basis or Claims brought in a purported representative capacity on behalf of the general public, other investors, or other persons similarly situated. The validity and effect of this paragraph shall be determined exclusively by a court, and not by the administrator or any arbitrator.
- e) If any portion of this Article 13 is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this section. The terms of this Article 13 will prevail if there is any conflict between the Rules and this Article 13.
- f) The parties acknowledge and agree that the arbitration agreement set forth in this Article 13 is made pursuant to a transaction involving interstate commerce, and thus the FAA shall govern the interpretation and enforcement of this Article 13. This Article 13 shall survive termination of this Agreement.

Except for disputes covered under this Article 13, each of the parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Florida and of the United States of America, in each case, located in Florida for any litigation among the parties hereto arising out of or relating to these securities, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the Florida Courts and agrees not to plead or claim in any Florida Court that such litigation brought therein has been brought in an inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the Florida Courts. Service of process, summons, notice or other document by certified mail to the applicable party's current address for correspondence shall be effective service of process for any suit, action or other proceeding brought in any such court. Each of the parties hereby irrevocably waives any right which it may have had to bring such an action in any other court, domestic or foreign, or before any similar domestic or foreign authority and agrees not to claim or plead the same.

## **14. Dissolution and Termination of the Company**

### **14.1 Dissolution**

The Company shall be dissolved upon an election of a majority of all of the Members to dissolve the Company or on the sale of the Properties, which may be determined solely by action of the Manager, who shall take such action on behalf of the Company (i.e., on self-liquidation). The Company will observe any mandatory provisions of the Act upon dissolution. On dissolution, Assets of the Company will be distributed as described in Article 4.5 hereof.

### **14.2 Termination of a Member Does Not Require Dissolution**

The disassociation, withdrawal, death, insanity, incompetency, Bankruptcy, dissolution, or liquidation of any Member or the Manager will not require dissolution of the Company.

### **14.3 Procedure for Winding-Up**

Upon the dissolution and termination of the Company caused by other than the termination of the Company under section 708(b)(1)(B) of the Code, the Manager shall proceed to wind up the affairs of the Company. During such winding-up process, the Profits, Losses, and Distributions of the Distributable Cash shall continue to be shared by the Members in accordance with this Agreement.

The Properties of the Company shall be liquidated as promptly as is consistent with obtaining fair market value (meaning the price a ready, willing and able buyer would pay to a ready, willing and able seller of each of the Properties, assuming each Property was exposed for sale on the open market for a reasonable period of time, taking into account all purposes for which a Property may be used under the existing statutes, laws and ordinances applicable to the Property, including, in the case of real property, zoning, land use restrictions, and private restrictions, such as covenants, conditions and restrictions of record, and local real estate market conditions). The Company will be dissolved as soon as practicable after sale of all of the Company's Assets, taking into account any contingent liabilities. As such, actual dissolution may not immediately occur and could take up to one (1) or more years to occur.

The proceeds from disposition of Assets owned by the Company shall be applied and distributed by the Company on or before the end of the taxable year of such liquidation if such liquidation occurs during the first year of Company operation, or within ninety (90) days after such liquidation thereafter. Upon dissolution of the Company, the Assets of the Company will be distributed as described in Article 14.1 hereof.

Upon the dissolution and commencement of the winding up of the Company, the Manager shall cause Articles of Dissolution to be executed on behalf of the Company and filed with the appropriate government agency, and the Manager shall execute, acknowledge and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

## 15. Miscellaneous Provisions

### 15.1 Notices

All notices and demands that the Manager is required to give the Members, shall be given in writing by email, or certified mail (return receipt requested with appropriate postage prepaid), or by personal delivery (with confirmation of service) to the address or facsimile transmission to the address on file with the Manager for the respective Member, provided that if any Member gives notice of a change of name, email or address, notices to that Member shall thereafter be given pursuant to such notice.

All notices and demands so given shall be effective upon receipt by the Member to whom notice, or a demand is being given except that any notice given by certified mail shall be deemed delivered three (3) days after mailing provided proof of delivery can be shown to:

Axis Income Fund, LLC  
c/o Axis Income Fund Management, LLC  
215 Anastasia Blvd.  
St. Augustine, FL 32080

### 15.2 Amendments

The Articles of Organization and this Agreement may only be substantively amended by the affirmative vote of all Members of the Company. However, notwithstanding anything to the contrary herein, the Manager may amend this Agreement in a manner not materially inconsistent with the principles of this Agreement, without the approval or vote of the Members, including without limitation:

- To issue non-substantive amendments to this Agreement to correct minor technical errors;
- To cure any ambiguity or to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to add any other provisions with respect to matters or questions arising under this Agreement which will not be materially inconsistent with the provisions of this Agreement;
- To take such steps as the Manager deems advisable to preserve the tax status of the Company as an entity that is not taxable as a corporation for federal or state income tax purposes;
- To delete or add any provisions to this Agreement as requested by the Securities and Exchange Commission or by state securities officials which is deemed by such regulatory agency or official to be for the benefit or protection of the Members;
- To make amendments similar to the foregoing so long as such action shall not materially and adversely affect the Members; or
- Any amendment required by a lender or a joint venture partner consistent with purposes of



obtaining financing for the Properties.

### 15.3 Successors and Assigns

All of the terms and conditions of this Agreement shall be binding upon the successors and assigns of the Members but shall not inure to the benefit of the successors or assigns of the Members except as otherwise expressly provided in this Agreement.

### 15.4 Waiver of Certain Rights

Each Member, on behalf of himself or itself and his or its successors, representatives, heirs, and assigns hereby waives and releases each and all of the following rights that he or it have or may have, if any, by virtue of holding an Interest in the Company: (i) any right of partition or any right to take any other action which otherwise might be available to such Person for the purpose of severing his or its relationship with the Company or such Person's interest in the assets held by the Company from the interest of the other Members; (ii) any right to valuation and payment for the Interests of any Member (including any appraisal rights such Member may be entitled to under the Act or otherwise) except as stated in Article 12 hereof; and (iii) any right to petition a court for judicial dissolution of the Company.

Each Member (and his, her, or its representatives, successors, and assigns) hereby irrevocably waives any and all right to maintain any actions for partition or to compel any sale with respect to any assets or properties of the Company.

### 15.5 Securities Laws Restrictions

The Interests described in this Agreement have not been registered under the Securities Act or under the securities laws of the States in which the Interests have been offered and sold or any other jurisdiction. Consequently, the Interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of the Securities Act, other applicable state law, and this Agreement.

### 15.6 Binding Effect

Except as may be otherwise prohibited by this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees, and assigns.

### 15.7 Construction

Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member or the Manager.

## 15.8 Time

Time is of the essence with respect to this Agreement.

## 15.9 Headings

Article and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

## 15.10 Captions

Captions to and headings of the articles, sections and subsections, paragraphs, or subparagraphs of this Agreement are inserted solely for the convenience of the parties, are not a part of this Agreement, and in no way define, limit, extend or describe the scope or the intent of any of the provisions.

## 15.11 Agreement Is Controlling

This Agreement is referenced as an Exhibit (Exhibit 2) to the Memorandum. In the event of a conflict between the Memorandum and this Agreement, this Agreement shall control.

In the event of a direct conflict between any provision of this Agreement and the Act, the Agreement shall control unless the conflicting provision of the Act is non-waivable, in which case the conflicting provision in the Agreement shall become subject to the severability provisions of Article 15.12 below.

## 15.12 Severability

Every provision of this Agreement is intended to be severable. If any phrase, sentence, paragraph, or provision of this Agreement or its application thereof to any Person or circumstance is unenforceable, invalid, the affected phrase, sentence, paragraph, or provision shall be limited, construed, and applied in a manner that is valid and enforceable. If the conflict was with a non-waivable provision of the Act, phrase, sentence, paragraph, or provision shall be modified to conform to the Act. In any event, the remaining provisions of this Agreement shall be given their full effect without the invalid provision or application. If any term or provision hereof is illegal or invalid for any reason whatsoever, such legality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

## 15.13 Incorporation by Reference

Every appendix, schedule, and other exhibit, that is attached to this Agreement or referred to herein, is hereby incorporated in this Agreement by reference.

## 15.14 Additional Acts and Documents

The Manager agrees to perform all further acts and execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

## 15.15 Florida Law

The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Members.

## 15.16 Counterpart Execution

This Agreement may be executed in any number of counterparts with the same effect as if all of the Members and the Manager had signed the same document. All the counterparts shall be construed together and shall constitute one agreement.

## 15.17 Application of Subchapter K

No election shall be made by the Company, or the Members for the Company to be excluded from the application of the provisions of Subchapter K of the Code, or from any similar provisions of State and foreign tax laws, which relate to the taxation of partnerships.

## 15.18 Merger

It is agreed that all prior understandings and agreements between the parties, written and oral, respecting this transaction are merged in this Agreement, which alone, fully and completely expresses such agreement, and that there are no other agreements except as specifically set forth in this Agreement and the accompanying Subscription Agreement. All Members must sign the Subscription Agreement, which will constitute their acceptance and signatures on this Agreement.

SIGNATURE PAGE FOLLOWS

# 16. Signatures

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement of Axis Income Fund, LLC as of the dates provided below. Member signatures on the Subscription Agreement will constitute acceptance of this Agreement.

**BY: THE COMPANY**

By: Axis Income Fund, LLC,  
A Florida limited Liability company

By: Its Manager,  
Axis Income Fund Management, LLC,  
A Florida limited Liability company

Dated: January 7, 2020

\_\_\_\_\_  
By: Bryan Greiner, its manager

Dated: January 7, 2020

\_\_\_\_\_  
By: George Bochis, its manager

**ALL SUBSCRIBERS MUST COMPLETE AND EXECUTE THE SUBSCRIPTION AGREEMENT (WHICH ALSO CONSTITUTES THEIR ACCEPTANCE OF THIS AGREEMENT) AND RETURN IT TO THE MANAGER AT THE ADDRESS PROVIDED HEREIN.**

## Appendix A: Table 1, Class A Members

### Identification of Class A Members and Percentage Interests (FOR INTERNAL USE ONLY)

Entity/Name	Capital Contribution	Subclass Purchased	Number of Class A Units Purchased	Ownership Percentage of Class A Interests	Ownership Percentage of Total Interests
<b>TOTAL</b>				<b>100%</b>	<b>70%</b>

**\*DUPLICATE THIS PAGE IF NECESSARY**

## Appendix A: Table 2, Class B Members

### Identification of Class B Members and Percentage Interest (FOR INTERNAL USE ONLY)

Entity/Name	Cash Contribution	Ownership Percentage of Class B Interests	Ownership Percentage of Total Interests
<b>TOTAL</b>	<b>\$1,000</b>	<b>100%</b>	<b>30%</b>

# Appendix B: Capital Accounts and Allocations

## 1. Capital Accounts

An individual Capital Account shall be maintained for each Member in accordance with Treasury Regulation section 1.704-1(b)(2)(iv) and adjusted with the following provisions:

- a. A Member's Capital Account shall be increased by that Member's Capital Contributions and that Member's share of Profits.
- b. A Member's Capital Account shall be adjusted for the amount of any Company liabilities assumed by that Member subject to and in accordance with Regulation section 1.704-1(b)(2)(iv)(c).
- c. A Member's Capital Account shall be decreased by (a) the amount of cash distributed to that Member and (b) the Gross Asset Value of the property so distributed, net of liabilities secured by such distributed property that such Member is considered to assume or to be subject to under Code section 752 (such that if liabilities are greater than the Fair Market Value of property so distributed, Member's Capital Account shall be increased by this net excess).
- d. A Member's Capital Account shall be reduced by the Member's share of any expenditures of the Company described in Code section 705(a)(2)(B) or which are treated as Code section 705(a)(2)(B) expenditures under Treasury Regulation section 1.704-1(b)(2)(iv)(i) (including syndication expenses and Losses nondeductible under Code sections 267(a)(1) or 707(b)).
- e. If any Economic Interest (or portion thereof) is transferred, the transferee of such Economic Interest or portion shall succeed to the transferor's Capital Account attributable to such Interest or portion.
- f. Each Member's Capital Account shall be increased or decreased as necessary to reflect a revaluation of a Property in accordance with the requirements of Treasury Regulation section 1.704-1(b)(2)(iv) (f) -(g), including the special rules under Treasury Regulation section 1.701-1(b)(4), as applicable.
- g. In the event the Gross Asset Values of the Company Assets are adjusted pursuant to this Agreement, the Capital Accounts of all Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company had recognized gain or loss equal to the amount of such aggregate net adjustment and the resulting gain or loss had been allocated among the Members in accordance with this Agreement.
- h. The foregoing provisions and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the Code and applicable Treasury Regulations and shall be interpreted and applied in a manner consistent therewith. In the event the Manager shall determine, after consultation with competent legal counsel, that it is prudent to modify the manner in which the Capital Accounts or any debits or credits thereto are allocated or computed in order to comply with such applicable federal law, the Manager

shall make such modification without the consent of any other Member, provided the Manager determines in good faith that such modification is not likely to have a material adverse effect on the amounts properly distributable to any Member and that such modification will not increase the liability of any Member to third parties.

## **2. Division of Profits and Losses for Tax Purposes**

### **2.1 Profit and Loss Allocations**

After giving effect to the special allocations set forth in Sections 2.2 and 2.3, Profits and Losses of the Company shall be allocated as follows:

#### *2.1.1 Net Profits*

Net Profits (which is the excess of Profits over Losses) for each Fiscal Year of the Company shall be allocated as follows:

- a. First to reverse any Net Losses allocated to a Member solely as a result of the application of the limitation of Section 2.1.2(b) to another Member; thereafter
- b. To the Members, in proportion to the Distributions received by the Members under Article 4 of this Agreement for the Fiscal Year.

#### *2.1.2 Net Losses*

Net Losses (which is the excess of Losses over Profits) for each Fiscal Year of the Company shall be allocated:

- a. To and among the Members pro-rata according to their respective Percentage Interests; however;
- b. Net Losses allocated pursuant to Section 2.1.2(a) hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an adjusted Capital Account deficit at the end of any Fiscal Year. In the event some but not all of the Members would have adjusted Capital Account deficits as a consequence of an allocation of Net Losses pursuant to Section 2.1.2(a), the limitation set forth in this Section 2.1.2(b) shall be applied on a Member by Member basis so as to allocate the maximum permissible Net Losses to each Member under Treasury Regulation section 1.704-1(b)(2)(ii)(d).



## 2.2 Special Allocations

### 2.2.1 *Non-Recourse Deductions*

Non-Recourse Deductions for any Fiscal Year shall be allocated to the Members in accordance with their Percentage Interests.

### 2.2.2 *Member Non-Recourse Deductions*

Member Nonrecourse Deductions for any Fiscal Year of the Company shall be allocated to the Members in the same proportion as Profits are allocated under Section 2.1.1, provided that any Member Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation section 1.704-2(i)(2).

### 2.2.3 *Minimum Gain Chargeback*

Except as otherwise provided in section 1.704-2 of the Treasury Regulations, and notwithstanding any other provision of this Section, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company Profits for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation section 1.704-2(g).

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 sections 1.704-2(f)(6), 1.704-2(j) (2), and other applicable provisions in section 1.704-2 of the Treasury Regulations. This Section is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Treasury Regulations and shall be applied consistently therewith.

### 2.2.4 *Member Minimum Gain Chargeback*

Except as otherwise provided in Treasury Regulation section 1.704-2(i)(4) and notwithstanding any other provision of this Section, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to Member Nonrecourse Debt during any Company Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt (determined in accordance with Treasury Regulation section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation section 1.704-2(i)(4).

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 Regulation sections 1.702-2(i)(4) and 1.704-2(j)(2). The provisions of this Section 2.2.4 are intended to comply with the minimum gain chargeback requirement in Treasury Regulation section 1.704-2(i)(4) and shall be interpreted in accordance therewith.

#### *2.2.5 Qualified Income Offset*

In the event any Member, in such capacity, unexpectedly receives any adjustments, allocations, or Distributions described in Treasury Regulation sections 1.704-1(b)(2)(ii)(d)(4) (regarding depletion deductions), 1.704-1(b)(2)(ii)(d)(5) (regarding certain mandatory allocations under the Treasury Regulations regarding family partnerships: the so called varying interest rules or certain in-kind Distributions), or 1.704-1(b)(2)(ii)(d)(6) (regarding certain Distributions, to the extent they exceed certain expected offsetting increases in a Member's Capital Account), items of Company income and gain shall be specially allocated to such Members in an amount and a manner sufficient to eliminate, as quickly as possible, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or Distributions.

Any special allocations of items of income or gain pursuant to this Section shall be taken into account in computing subsequent allocations of Profits pursuant to this Section so that the net amount of any items so allocated and the Profits, Losses, or other items so allocated to each Member pursuant to this Section, shall to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to this Section as if such unexpected adjustments, allocations, or Distributions had not occurred.

#### *2.2.6 Special Allocation of Net Profit from Capital Transactions*

After accounting for any allocations set forth in Sections 2.2 and 2.3, Net Profit (which is the excess of Profit over Losses) of the Company resulting from a Capital Transaction shall be allocated to the Members in proportion to the Distributions received (or to be received) from such Capital Transaction under Article 4.4 of this Agreement.

In any Fiscal Year of the Company, Net Losses resulting from a Capital Transaction shall be allocated to Members with positive Capital Accounts, in proportion to their positive Capital Account balances, until no Member has a positive Capital Account. For this purpose, Capital Accounts shall be reduced by the adjustments set forth in Treasury Regulation section 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

## 2.3 Other Allocations

### 2.3.1 *Section 704(c) Allocations*

In accordance with section 704(c) of the Code and the applicable Treasury Regulations issued thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event Gross Asset Value of the Assets are adjusted pursuant to this Agreement, subsequent allocations of income, gain, loss, and deduction with respect to such Asset shall take into account any variation between the adjusted basis of such Asset for federal income tax purposes and its Gross Asset Value in the same manner as under section 704(c) of the Code and the Treasury Regulations thereunder.

The Manager shall make any election or other decisions relating to such allocations in any manner that reasonably reflects the purpose of this Agreement. Allocations made pursuant to this Section are solely for purposes of federal, state, and local taxes and shall not affect or in any way be taken into account in computing any Member's Capital Account or share of Profits, Losses, or other items, or Distributions pursuant to any provision of this Agreement.

### 2.3.2 *Curative Allocations*

The Manager shall make such other special allocations as are required in order to comply with any mandatory provision of the applicable Treasury Regulations or to reflect a Member's Economic Interest in the Company determined with reference to such Member's right to receive Distributions from the Company and such Member's obligation to pay its expenses and liabilities.

### 2.3.3 *Allocation of Tax Items*

To the extent permitted by section 1.704-1(b)(4)(i) of the Treasury Regulations, all items of income, gain, loss and deduction for federal and state income tax purposes shall be allocated to the Members in accordance with the corresponding "book" items thereof; however, all items of income, gain, loss and deduction with respect to Assets with respect to which there is a difference between "book" value and adjusted tax basis shall be allocated in accordance with the principles of section 704(c) of the Code and section 1.704-1(b)(4)(i) of the Treasury Regulations, if applicable.

Where a disparity exists between the book value of an Asset and its adjusted tax basis, then solely for tax purposes (and not for purposes of computing Capital Accounts), income, gain, loss, deduction and credit with respect to such Asset shall be allocated among the Members to take such difference into account in accordance with section 704(c)(i)(A) of the Code and Treasury Regulation section 1.704-1(b)(4)(i). The allocations eliminating such disparities shall be made using any reasonable method permitted by the Code, as determined by the Manager.

#### 2.3.4 *Acknowledgement*

The Members are aware of the income tax consequences of the allocations made by this Section and hereby agree to be bound by the provisions of this Section in reporting their share of Company income and loss for income tax purposes.

### **3. Treatment of Distributions of Cash for Tax Purposes**

#### 3.1 Distributions of Cash

In the event that the Company generates Distributable Cash from Capital Transactions, the Company will make Cash Distributions to the Members as described in Article 4 of this Agreement.

#### 3.2 In-Kind Distribution

Except as otherwise expressly provided herein, without the prior approval of the Manager, Assets of the Company or Assets of its Subsidiaries, other than cash, shall not be distributed in-kind to the Members. If any Assets of the Company are distributed to the Members in-kind for purposes of this Agreement, any Member entitled to any Interest in such Assets shall receive such Interest as a tenant-in-common with the other Member(s) so entitled with an undivided Interest in such Assets in the amount and to the extent provided for in this Agreement.

Upon such Distribution, the Capital Accounts of the Members shall be adjusted as provided in Treas. Reg. §1.704 (1)(b)(2)(iv)(e).

#### 3.3 Company Election Regarding 1031 Exchange of its Properties

The Company may elect, at the time of sale of a Property, to have the Company exchange a Property for another property, in compliance with the section 1031 of the Code, in which case recognition of the gain on the sale of a Property may be deferred.

If this action is approved but there are individual Members who do not want to participate in the exchange, they will have the option of relinquishing their Membership Interests in the Company and taking a Cash Distribution after the purchase of the replacement property has been consummated, to be determined at the time of the sale, in the same fashion as Distributions described in Article 4.4 of this Agreement.

### 3.4 Prohibited Distribution; Duty to Return

A Distribution to any Member may not be made if it would cause the Company's total liabilities to exceed the fair value of the Company's total Assets. A Member receiving a Distribution in violation of this provision is required to return it, if the Member had knowledge or is subsequently notified of the violation.

## 4. Other Tax Matters

### 4.1 Company Tax Returns

The Manager will prepare an annual information package that will be available on request by April 1<sup>st</sup> of each year. See Article 10.4 of this Agreement.

### 4.2 Tax Treatment of Additional or Substituted Members

No Additional or Substitute Members (described below) shall be entitled to any retroactive allocation of Losses, income, or expense deductions incurred by the Company.

The Manager may, at its option, at the time an Additional or Substituted Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, income, and expense deductions to the Additional or Substituted Member for that portion of the Company's tax year in which the Additional Member was admitted in accordance with the provisions of section 706(d) of the Code and the Treasury Regulations promulgated thereunder.

### 4.3 Allocation and Distributions between Transferor and Transferee

Upon the transfer of all or any part of a Member's Interest as hereinafter provided, Profits and Losses shall be allocated between the transferor and transferee on the basis of the computation method which in the reasonable discretion of the Manager is in the best interests of the Company, provided such method is in conformity with the methods prescribed by section 706 of the Code and Treasury Regulation section 1.704-1(c)(2)(ii). Distributions shall be made to the holder of record of such Member's Interest on the date of Distribution.

Any transferee of a Member Interest shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Interest; provided, however, that if such transfer causes a termination of the Company pursuant to section 708(b)(1)(B) of the Code, the Capital Accounts of all Members, including the transferee, shall be re-determined as of the date of such termination in accordance with Treasury Regulation section 1.704-1(b).

## 5. Tax Representative

### 5.1 Appointment

The Members intend that the Company shall be treated as a partnership for federal income tax purposes and any similar provisions of state or local law regarding income taxes. The Manager will appoint the Tax Representative of the Company for purposes of this section. Under Section 10.5 the initial Tax Representative will be the Manager. The Tax Representative will have the authority of the "partnership representative" under Code sections 6221 through 6241, as amended by the BBA. Each Member will execute, certify, acknowledge, deliver, swear to, file, and record all documents necessary or appropriate to evidence such Member's approval of this designation. Except as otherwise provided in this Agreement, the Tax Representative, in his, her, or its sole discretion, shall have the right to make on behalf of the Company any and all elections under the Code or provisions of State tax law.

### 5.2 Tax Examinations and Audits

At the expense of the Company, the Tax Representative shall represent the Company in connection with all examinations of the Company's affairs by the Internal Revenue Service or with any state, local, or non-U.S. taxing authorities (each, a Taxing Authority) and is hereby authorized to take any and all actions that the Tax Representative reasonably determines to be appropriate and is permitted to take under applicable legal requirements when acting in such capacity. Any decisions made by the Tax Representative, including, but not limited to, whether or not to settle or contest any tax matter, whether or not to extend the period of limitations for the assessment or collection of any tax, and the choice of forum for such contest, will be made in the Tax Representative's sole and absolute discretion. The Member's recognize that the decisions of the Tax Representative may be binding upon all of the Members.

The Tax Representative will be reimbursed by the Company for all out-of-pocket costs and expenses reasonably incurred in connection with any such proceeding. Such expenses include, without limitation, fees of attorneys and other tax professionals, accountants, appraisers and experts, filing fees and reasonable out-of-pocket costs and expenses. The Tax Representative will be indemnified by the Company (solely out of Company assets) with respect to any action brought against the Tax Representative in connection with the resolution of any such proceeding, except for any claims arising out of or relating to the gross negligence or willful misconduct of the Tax Representative in such capacity.

The Tax Representative will inform the Members of all significant matters that may come to its attention in its capacity as Tax Representative by giving notice thereof on or before the tenth business day after becoming aware thereof, and within that time, will forward to each other Member copies of all significant written communications the Tax Representative may receive in such capacity.

### 5.3 Election Out Required if Available

The Members acknowledge and agree that it is the intention of the Members to minimize any obligations of the Company to pay taxes and interest in connection with any audit of the Company and/or any partnership of which the Company is a partner. For any year that the Company is eligible to elect out of the BBA audit procedures pursuant to Code section 6221(b) (the “Opt-Out Election”), the Tax Representative will make such election on the Company’s tax return for such taxable year. In addition, if the Company is eligible to make the Opt-Out Election, then, without the consent of the Manager, a Member cannot transfer its interest to any Person whose entity status under the Code would make the Company ineligible to make an election out of the BBA. To the extent any Member would assign its interests in violation of this paragraph, such assignment shall be void. Further, no Member may elect to change its entity status under the Code to become a partnership without approval of the Manager, after consultation with appropriate tax advisors.

### 5.4 Tax Elections and Deficiencies

If the Opt-Out Election is not available, the Tax Representative, in his, her, or its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the “partnership representative” or the Company under the BBA, including but not limited to an election under Code section 6226 or having the Members file amended returns under Code section 6225(c)(2). The Members agree to cooperate in good faith, including by timely providing information reasonably requested by the Tax Matters Member and making elections and filing amended returns reasonably requested by the Tax Matters Member. The Company shall use commercially reasonable efforts to make any modifications available under Code sections 6225(c)(3), (4), and (5).

### 5.5 Deficiencies

Any deficiency for taxes imposed on any Member or former Member (including penalties, additions to tax or interest imposed with respect to such taxes and any taxes imposed pursuant to Code section 6226) will be paid by such Member. The Company will make any payments it may be required to make under the Revised Partnership Audit Procedures of the BBA and the Tax Representative will allocate any such payment among the current or former Members of the Company for the “reviewed year” to which the payment relates in a manner that reflects the current or former Members’ respective interests in the Company for such “reviewed year” and any other factors taken into account in determining the amount of the payment (with the intent of apportioning the payment in the same manner as if the Company had made the election under section 6226 of the Code and the payment had been assessed directly against such Member). Deficiencies owed by a Member currently treated as a partner for federal income tax purposes may be recovered by the Company from such Member by withholding from such Member any Distributions otherwise due to such Member. For purposes of Company’s internal accounting, such withheld Distributions retain their treatment as a return on investment or as a return of capital. If a Member ceases to be a Member before the Company is able to withhold any amount

of the tax paid, the amount left to be repaid will be treated as an amount owed by a former Member. The Company may demand payment from such former Member and if payment is not received within 30 days of demand, the Company shall place a market rate of interest on the outstanding deficiency owed by the former Member and shall treat the amount of money owed by the former Member to the Company as a loan. The provisions contained in this Section 5.5 will survive the dissolution of the Company and the withdrawal of any Member or the Transfer of any Member's interest in the Company

## 5.6 Tax Returns

At the expense of the Company, the Tax Representative shall use commercially reasonable efforts to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company pursuant to the Code as well as all other required tax returns in each jurisdiction in which the Company is required to file returns. As soon as reasonably possible after the end of each taxable year of the Company, but in no event later than March 15 of the subsequent taxable year, the Tax Representative will cause to be delivered to each person who was a Member at any time during such taxable year, IRS Schedule K-1 to Form 1065 and such other information with respect to the Company as may be necessary for the preparation of such person's federal, state, and local income tax returns for such taxable year.

The Tax Representative shall make the following elections on the appropriate tax returns:

- To adopt the calendar year as the Company's Fiscal Year, unless doing so would require the Company or Members to pay an interest charge to the Internal Revenue Service for the deferral at which point the Tax Representative must elect a Fiscal Year not causing such interest charge, provided that Tax Representative may still elect the calendar year as the Fiscal Year despite having to pay an interest charge if all of the Voting Interests approve the choice of Fiscal Year;
- To adopt the cash method of accounting and to keep the Company's books and records as necessary for preparation of annual income tax returns;
- If a distribution of Company Property as described in section 734 of the Code occurs or if a transfer of a Member's Interest as described in section 743 of the Code occurs, on written request of any Member, to elect, pursuant to section 754 of the Code, to adjust the basis of Company's assets;
- To elect to amortize the organizational expenses of the Company and the start- - up expenditures of the Company under section 195 of the Code ratably over a period of 60 months as permitted by section 709(b) of the Code; and
- Any other election the Manager may deem appropriate and in the best interests of the Members.



## 5.7 Consistent Treatment of Company Tax Items

No Member shall treat any Company Tax Item inconsistently on such Member's Federal, State, foreign or other income tax return with the treatment of such Company Tax Item on the Company's tax return. For these purposes, the term "Company Tax Item" means any item of the Company of income, loss, deduction, credit, or otherwise reported (or not reported) on the Company's tax returns.

## 6. Tax Matters Related to Foreign Investors

### 6.1 Non-U.S. Investors

The discussion below is applicable solely to Non-U.S. Persons investing directly with the Company. For these purposes, a "Non-U.S. Person" is someone who is not a resident or citizen of the United States as defined under the Code.

Depending on the terms of a Non-U.S. Person's home country and the United States (U.S.), the Company may be required to withhold U.S. Federal income tax on a Non-U.S. Person's distributive share of profits or other income the Company receives during Property operations. The Company may further be required to withhold U.S. Federal income tax on the amount of gain realized on the disposition of a "U.S. real property interest" that may be included in a Non-U.S. Person's Distribution. These withholding amounts may be as much as thirty-nine percent (39%) of a Non-U.S. Person's Distribution. Each Non-U.S. Person that invests in this Offering will be required to file a U.S. Federal income tax return reporting such gain. Further, the gain, if any, realized on the sale of all or any portion of a Membership Interest in the Company will be subject to U.S. income tax.

The Company will be required to withhold U.S. Federal income tax at the highest rate applicable for any "effectively connected taxable income" (as that term is defined by the IRS) allocated to a Non-U.S. Person, and the amount withheld will be available as a credit against the tax shown on such Person's return. The computation of income effectively connected with the Company may be different from the computation of the Non-U.S. Person's effectively connected income (because, for example, when computing the Company's effectively connected income, net operating losses from prior years are not available to offset the Company's current income), so in any given year the Company may be required to withhold tax with respect to its Non-U.S. Person-Investors in excess of their individual Federal income tax liability for the year.

If a Non-U.S. Person invests through an entity taxed as a corporation under the Code, it may be subject to a branch profits tax on its effectively connected income. The branch profits tax is a tax on the "dividend equivalent amount" of a non-U.S. corporation (which may apply in the case of a limited liability company), which is approximately equal to the amount of such Company's earnings and profits attributable to effectively connected income that is not treated as reinvested in the U.S. The effect of the branch profits tax will increase the maximum U.S. Federal income tax

rate on effectively connected income substantially. Some U.S. income tax treaties provide exemptions from, or reduced rates for, the branch profits tax for “qualified residents” of the treaty country. The branch profits tax may also apply if a Non-U.S. Person claims deductions against their effectively connected income from the Company for interest on indebtedness of its non-U.S. Member.

The Company is authorized to withhold and pay over any withholding taxes and treat such withholding as a payment to the Non-U.S. Person if the withholding is required. Such payment will be treated as a Distribution to the extent that the Non-U.S. Person is then entitled to receive a Distribution. To the extent that the aggregate of such payments to a Non-U.S. Person for any period exceeds the Distributions to which they are entitled for such period, the Company will notify the Non-U.S. Person as to the amount of such excess and the amount of such excess will be treated as a loan by the Company to the Non-U.S. Person if the Company is required to pay it on the Member’s behalf.

Additionally, if a Non-U.S. Person owns a Membership Interest directly on the date of death, its estate could be further subject to U.S. estate tax with respect to such Interest.

## 6.2 Foreign Person Withholding

The Company shall comply with all reporting and withholding requirements imposed with respect to Non-U.S. Persons, as defined in the Code. Such payment will be treated as a Distribution or an advance of Distributions to the extent that the Non-U.S. Person is then entitled to receive a Distribution. To the extent that the aggregate of such payments to a Non-U.S. Person for any period exceeds the Distributions to which they are entitled for such period, the Company will notify the Non-U.S. Person as to the amount of such excess. Any Member that is a Non-U.S. Person shall be obligated to contribute to the Company any funds necessary to enable the Company (to the extent not available out of such Member’s share of Distributable Cash or Net Proceeds of Capital Transactions) to satisfy any such withholding obligations. In the event any Member shall fail to contribute to the Company any funds necessary to enable the Company to satisfy any withholding or Member tax obligation, the Manager shall have the right to offset against any payments due and owing to such Member, or its Affiliates, the amounts necessary to satisfy such withholding obligation, or, in the event the Company shall be required to borrow funds to satisfy any withholding obligation by reason of a Member’s failure to contribute such funds to the Company, the Manager shall have the right to offset against said Member’s present and future Distributions (or repayment of its Capital Contributions), in an amount equal to the amount so borrowed plus the greater of (i) the Company’s actual cost of borrowing such funds, or (ii) the amount borrowed, multiplied by fifteen percent (15%).

## 6.3 Non-U.S. Taxes

The Company may be subject to withholding and other taxes imposed by, and the Non-U.S. Person might be subject to, taxation and reporting requirements in non-U.S. jurisdictions. It is possible that tax conventions between such countries and the U.S. (or another jurisdiction in which a non-U.S. Member is a resident) might reduce or eliminate certain of such taxes. It is also

possible that in some cases, if the Non-U.S. Person is a taxable Member, it might be entitled to claim U.S. tax credits or deductions with respect to such taxes, subject to certain limitations under applicable law. The Company will treat any such tax withheld from or otherwise payable as a Distribution payment equal to the portion of such tax that is attributable to it. Similar provisions would apply in the case of taxes the Company is required to withhold.

## **7. Tax Matters Related to State Withholding Taxes on Members**

The Company shall comply with all reporting and withholding requirements required by a state of the United States with regards to a Member not resident in that state, as defined in the tax law of such state. Such payment will be treated as an advance of Distributions to the extent that the out-of-state Member is then entitled to receive a Distribution. To the extent that the aggregate of such payments to such out-of-state Member for any period exceeds the Distributions to which they are entitled for such period, the Company will notify the out-of-state Member as to the amount of such excess. Any Member that is an out-of-state Member shall be obligated to contribute to the Company any funds necessary to enable the Company (to the extent not available out of such Member's share of Distributable Cash or Net Proceeds of Capital Transactions) to satisfy any such withholding obligations. In the event any Member shall fail to contribute to the Company any funds necessary to enable the Company to satisfy any withholding or Member tax obligation, the Manager shall have the right to offset against any payments due and owing to such Member, or its Affiliates, the amounts necessary to satisfy such withholding obligation, or, in the event the Company shall be required to borrow funds to satisfy any withholding obligation by reason of a Member's failure to contribute such funds to the Company, the Manager shall have the right to offset against said Member's present and future Distributions (or repayment of its Capital Contributions).

Should a state permit but not require the Company to withhold tax on behalf of a Member, Company shall withhold if and only if that Member provides an express written consent to the Manager requesting such withholding for the specific tax year at issue.

## Appendix C: Glossary

Defined terms are capitalized in this Agreement. The singular form of any term defined below shall include the plural form and the plural form shall include the singular. Whenever they appear capitalized in this Agreement, the following terms shall have the meanings set forth below unless the context clearly requires a different interpretation:

Act shall mean the Florida Limited Liability Company Act, codified in the Florida Revised Limited Liability Company Act, codified in the Florida Statutes, Title XXXVI, Chapter 605, sections 605.0101 through 605.1108, as may be amended from time to time, unless a superseding Act governing limited liability companies is enacted by the state legislature and given retroactive effect or repeals this Act in such a manner that it can no longer be applied to interpret this Memorandum of the Agreement, in which case Act shall automatically refer to the new Act, where applicable, to the extent such re-interpretation is not contrary to the express provisions of this Memorandum or the Agreement.

Additional Capital Contribution shall mean any contribution to the capital of the Company in cash, property, or services by a Member made subsequent to the Member's initial Capital Contribution.

Additional Member shall mean any Person that is admitted to the Company as a new or additional member by the Manager once the offering of Interests to new Members has been closed by the Manager.

Advance, Advances or Member Loans shall have meanings as provided in Article 3 hereof.

Affiliate or Affiliated shall mean any Person controlling or controlled by or under common control with the Manager or a Member wherein the Manager or Member retains greater than fifty percent (50%) control of the Affiliate if an entity.

Agreement or Operating Agreement shall mean this written agreement, which shall govern the affairs of the Company and the conduct of its business consistent with the Act or the Articles of Organization, including all amendments thereto. No other document or other agreement between the Members shall be treated as part or superseding this Agreement unless it has been signed by all of the Members. This Agreement will supersede any prior versions.

Article when capitalized and followed by a number refers the sections of this Agreement and its Appendices.

Articles of Organization shall mean the document filed with the Florida Department of State pursuant to the formation of the Company, and any amendments thereto or restatements thereof.

Asset or Company Asset shall mean any real or personal property owned by the Company.

BBA means the Bipartisan Budget Act of 2015.

Bankrupt or Bankruptcy means being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

Capital Account shall mean the amount of the capital interest of a Member in the Company consisting of that Member's original contribution, as (1) increased by any additional contributions and by that Member's share of the Company Profits, and (2) decreased by any Distribution to that Member and by that Member's share of the Company's Losses.

Capital Contribution or Contribution shall mean any contribution to the capital of the Company in cash, property, or services by a Member whenever made.

Capital Transaction shall mean the refinance, sale or other disposition of a Company Asset.

Class A Interests shall mean Interests in the Company purchased by the Class A Members in the form of Class A Units.

Class A Members or Class A Investor shall mean those Members who have purchased Class A Units or Interests; which references may be further distinguished by subclass (i.e., Class A Fixed, Class A-1 or Class A-2).

Class B Cash Distribution shall mean the Distribution disbursed to the Class B Members as described in Article 4 of the hereof. Class B Distributions are subordinate to a return of the Class A Capital Contributions and Class A Distributions.

Class B Interest shall mean the Interests in the Company purchased by the members of Axis Investment Fund Management, LLC (or its members or their Affiliates) and/or others determined in the sole discretion of the Manager.

Class B Members shall initially mean the Manager, or members of the Manager or their Affiliates, but may include others to whom the Manager grants or sells Class B Interests. Class B Units may only be granted, revoked, re-allocated, or modified by the initial Manager. Any alteration of Class B Interests desired by a subsequent Manager must be approved by a majority of Interests of the Class B Members.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time.

Company shall refer to Axis Income Fund, LLC, a Florida limited liability company.

Company Minimum Gain has the meaning set forth in sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

Disassociation shall mean an action of the Manager to remove a Member's right to participate in management (i.e., removal of its voting Interest) for cause (per Article 12.1) or by operation of law (per Article 12.2).

Disassociated Member shall mean a Member who has been involuntarily disassociated from the Company by one of the actions described in Article 12.1 or 12.2, or by Voluntary Transfer of its Membership Interest to a Voluntary Transferee as described in Articles 11.3 through 11.5.

Dispute, when capitalized, shall have the meaning set for in Article 13 hereof.

Distributable Cash means all cash of the Company derived from Property operations or Capital Transactions and miscellaneous sources (whether or not in the ordinary course of business) reduced by the amount necessary for the payment of: (a) reasonable and customary operating expenses, including but not limited to Manager Fees, broker commissions, property management fees, marketing fees, utilities, closing costs, holding costs, construction costs, etc., incurred by or on behalf of the Company, (b) all current installments of interest and/or principal due and owing with respect to third party debts and liabilities of the Company during such period, (c) repayment of Advances or Member loans plus interest thereon (per their agreed terms); and (d) such additional reasonable amounts as the Manager, in the exercise of sound business judgment, determines to be necessary or desirable as Working Capital and/or Reserves for Property improvements or operation of the business and future or contingent liabilities or expenses of the Company. Distributable Cash may be generated through either operations or Capital Transactions.

Distribution, Distributions or Cash Distributions shall mean the disbursement of cash or other property to the Manager or Members in accordance with the terms of this Agreement.

Economic Interest shall mean a Person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive Distributions from, the Company, but does not include any other rights of a Member, including, without limitation, the right to vote or to participate in management, except as provided in the Act, and any right to information concerning the business and affairs of the Company.

Estimated Market Value shall mean the estimated market value of the Company, which shall be determined annually by the Manager and reported to the Members.

Fee shall mean an amount earned by the Manager or an Affiliate as compensation for various aspects of operation of the Company, as described in Article 5.2 hereof.

Fiscal Year shall mean the Company's fiscal year, which shall be the calendar year.

Good Cause shall have the meaning set forth in Article 8.3 hereof.

Gross Asset Value shall mean the asset's adjusted basis for federal income tax purposes, except as follows: the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Estimated Market Value of such asset as determined annually by the Manager.

Gross Asset Value may be adjusted pursuant to Code sections 734 and 754 whenever it is determined by the Manager that such adjustment is appropriate and advantageous.

Interest or Membership Interest shall mean a Member's rights in the Company including the Member's Economic Interest, plus any additional right to vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the Act and/or described in this Agreement.

Key Principals shall mean Bryan Greiner and George Bochis.

Investor shall mean a Person who is accepted by the Manager as a Member of the Company.

Involuntary Transfer shall mean any transfer not specifically authorized under Article 11.

Involuntary Transferee shall mean a Member's heirs, estate, or creditors that have taken by foreclosure, receivership, or inheritance and not as a result of a Voluntary Transfer.

Losses shall mean, for each Fiscal Year, the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year under the cash method of accounting and as reported, separately or in the aggregate as appropriate, on the Company's information tax return filed for federal income tax purposes plus any expenditures described in section 705(a)(2)(B) of the Code.

Major Decisions shall mean those decisions listed in Article 6.4 hereof.

Majority of Interests shall mean Members whose collective Percentage Interests represent more than fifty percent (50%) of the Interests, whether in the Company or in a particular Class, as specified in specific provisions of this Agreement.

Manager shall initially refer to Axis Income Fund Management, LLC, a Florida limited liability company and each of its managers, members, officers, shareholders, directors, employees and agents (as applicable) or any other Person or Persons, as well as any of its Affiliates that may become a Manager pursuant to this Agreement as further described in Article 1.3 of this Agreement or any other Manager who shall be qualified and elected per Article 8 of this Agreement.

Member means only a Person who: (1) has been admitted to the Company as a Member in accordance with the Articles of Organization or this Agreement, or an assignee of an Interest in the Company who has become a Member; (2) who has not resigned, withdrawn, or been expelled as a Member or, if other than an individual, been dissolved. Member does not include a Person who succeeds to the Economic Interest of a Member, unless such Person is admitted by the Manager as a new, Substitute or Additional Member, in accordance with the provisions for such admission as further described herein.

Member Nonrecourse Debt has the meaning set forth in section 1.704-2(b)(4) of the Treasury Regulations.

Member Nonrecourse Debt Minimum Gain means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with section 1.704-2(i)(3) of the Treasury Regulations.

Member Nonrecourse Deductions has the meaning set forth in Treasury Regulation section 1.704-2(i)(2). For any Fiscal Year of the Company, the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt equals the net increase during that Fiscal Year in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt during that Fiscal Year, reduced (but not below zero) by the amount of any Distributions during such year to the Member bearing the economic risk of loss for such Member Nonrecourse Debt if such Distributions are both from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, all as determined according to the provisions of Treasury Regulation section 1.704-2(i)(2). In determining Member Nonrecourse Deductions, the ordering rules of Treasury Regulation section 1.704-2(j) shall be followed.

Nonrecourse Deductions has the meaning set forth in Treasury Regulation section 1.704-2(c). The amount of Nonrecourse Deductions for a Company Fiscal Year equals the net increase in the amount of Company Minimum Gain during that Fiscal Year, reduced (but not below zero) by the aggregate amount of any Distributions during that Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain.

Nonrecourse Liability has the meaning set forth in section 1.704-2(b)(3) of the Treasury Regulations.

Notice of Sale shall have the meaning set forth in Article 11.5.1, pertaining to a Voluntary Transfer of a Member's Interest.

Notice to Perform shall have the meaning set forth in Article 8.2.

Organization Expenses shall mean legal, accounting, and other expenses incurred in connection with the formation of the Company.

Percentage Interest shall mean the ownership interest in the Company of a Member, which shall be the calculated by dividing the number of Units purchased by the Member by the total number of Units (Class A or B) issued. See Article 2.3 of this Agreement; see also definition of Class A Percentage Interests above and Appendix A, Tables 1 and 2, attached to this Agreement.

Person means an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity.

Preferred Return shall mean an annual return calculated against the Unreturned Capital Contributions of all Class A Members in total or according to subclass, as described in Article 4.2.



Procedure, when capitalized, shall refer to the Internal Dispute Resolution Procedure described in Article 13 hereof.

Profits shall mean, for each Fiscal Year, the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year under the cash method of accounting and as reported, separately or in the aggregate as appropriate, on the Company's informational tax return filed for federal income tax purposes plus any income described in section 705(a)(1)(B) of the Code.

Properties, Property or Company Property shall mean the self-storage facilities, hotels, multi-family properties and residential subdivisions, to be acquired and/or developed by the Company in the Southeastern US as described in Article 1.9 hereof.

Property Manager shall mean a professional real estate brokerage or other qualified Person hired by the Company to manage rental and maintenance of each of its Properties during ownership by the Company. The Property Manager may be an Affiliate of the Manager.

Purchasing Member shall mean any current Member (or member of the Manager) contemplating the purchase of all or any portion of the rights of membership in the Company of a Member, including the Member's Economic Interest and/or voting rights referenced in Articles 11 and 12.

Remaining Members shall have the meaning set forth in Articles 11.5.3 and 12.3 hereof.

Removal Notice shall have the meaning set forth in Article 8.4 hereof.

Section, when capitalized and followed by a number, refers the sections within the Appendices of this Agreement.

Securities Act means the Securities and Exchange Act of 1933, as amended.

Selling Member shall mean any Member that sells, assigns, hypothecates, pledges, or otherwise transfers all or any portion of its rights of membership in the Company, including its Economic Interest and/or voting rights.

Subsidiary or Subsidiaries shall mean the single purpose entities, wholly owned by the Company, to be formed by the Manager to take title to individual Properties.

Substitute Member or Substituted Member shall mean any Person or entity admitted to the Company, after approval by the Manager, with all the rights of a Member pursuant to Article 11.4 of this Agreement and Section 4.2 of Appendix B to this Agreement.

Tax Representative shall mean the Person designated by the Manager as having the authority of a "partnership representative" under Code sections 6221 through 6241.

Transferee, when capitalized, shall have the meaning set forth in Article 11.4 hereof.

Treasury Regulations shall mean the Regulations issued by the United States Department of the Treasury under the Code.

Unit shall mean the incremental dollar amount of One Thousand Dollars (\$1,000) established by the Manager for sale of individual Class A Interests that Investors may purchase in order to become Members of the Company. Note: Units issued by the Company are “personal property” and not “real property” Interests, thus, may be ineligible for exchange under federal tax law or “1031 exchange” rules.

Unreturned Capital Contributions means all Capital Contributions made by a Class A Member less any returned capital.

Voluntary Transfer shall have the meaning set forth in Article 11.

Working Capital, Working Capital and Reserves, Reserve or Reserves shall mean, with respect to any fiscal period, funds set aside or amounts allocated during such period that shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service, or other costs or expenses incidental to the improvement or ownership of the Properties or for operation of the Company’s business.