Name Memorandum No

## CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

**MILL GREEN OPPORTUNITY FUND IV, LLC**

## A REAL ESTATE DEVELOPMENT FUND

**$40,000,000**

## BEST EFFORTS OFFERING OF MEMBERSHIP INTERESTS

This Confidential Private Placement Memorandum (this “**Memorandum**“) is being furnished to prospective investors (individually, an “**Investor**“ and collectively, “**Investors**“) on a confidential basis in connection with the offer and sale (the “**Offering**”) of up to $40,000,000 of membership interests (the “**Interests**”) in Mill Green Opportunity Fund IV, LLC, a Delaware limited liability company (the “**Fund**“), and may not be used for any other purpose. This Memorandum may not be reproduced or provided to others without the prior written permission of the Fund’s manager, Mill Green Partners, LLC, a Delaware limited liability company (the **Manager”**). The Manager may increase the size of the Fund at its discretion.

Mill Green Opportunity Fund IV, LLC was recently formed for the purpose of initially investing in a multifamily development project in Fort Myers, FL, subject to final due diligence and approval by the Manager, and future multifamily, student housing or grocery anchored retail development or re-development projects that meet the Fund’s investment objectives. The Fund’s investment objective is to produce attractive risk adjusted returns for the Fund’s investors through the development or re-development, stabilization and disposition of these projects.

The Offering is being conducted on a “best efforts” basis. Pending each closing, payments for the Interests will be deposited in a segregated escrow account with HomeBanc, N.A., as escrow agent for the Fund. See “*Section XII - How to Subscribe* ”

**Skyway Capital Markets, LLC**

**March 1, 2017**

In making an investment decision, Investors must rely on their own examination of the Fund and the terms of the offering, including the merits and risks involved. The securities offered hereby have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense. The membership interests are offered subject to the right of the Manager to reject any subscription in whole or in part. If the Manager rejects a subscription, the prospective Investor will be notified as soon as is practicable.

Offers and sales of the Interests will not be registered under the laws of any jurisdiction (including the United States Securities Act of 1933, as amended (the “**Securities Act**“), the laws of any state of the United States of America or the laws of any foreign jurisdiction) and may not be sold or transferred without compliance with applicable securities laws. Neither the United States Securities and Exchange Commission (the “**SEC**“) nor the securities commission or any other agency of any other jurisdiction or state has reviewed or passed upon the merits of this offering. The operating agreement of the Fund (the “**Operating Agreement**“) also has restrictions on transferability. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

Investment in the Interests will involve significant risks due, among other things, to the nature of the Fund’s investments. Please refer to *Section IX — Risk Factors and Conflicts of Interest* of this Memorandum for more information about the risks involved with investing in the Fund. Investors should have the financial ability and willingness to accept the risks and lack of liquidity that are characteristic of the investment described herein. There will be no public market for the Interests, and the Interests will not be transferable without the consent of the Manager. No assurance can be given that the Fund’s investment objectives will be achieved or that Investors will receive a return of their capital.

Prospective Investors should not construe the contents of this Memorandum or any prior or subsequent communication from the Fund or its affiliates, or its directors, officers, employees or agents, as legal, tax or investment advice. Each prospective Investor should consult its own legal counsel or other professional adviser as to legal, tax and investment matters concerning the proposed investment. Prospective Investors will have the opportunity to ask questions of, and receive answers from, representatives of the Fund concerning the terms and conditions of the offering, and to obtain additional information (to the extent possessed by the Fund or available to it without unreasonable cost or effort) necessary to verify the accuracy of the information contained herein.

This Memorandum is qualified in its entirety by reference to (1) the Operating Agreement, a copy of which is attached to this Memorandum as Exhibit A, and (2) the form of Project Development Company Agreement, a copy of which is attached to this Memorandum as Exhibit

B. Each of the Operating Agreement and the form of Project Development Company Agreement should be reviewed prior to purchasing an interest in the Fund. No person has been authorized in connection with this offering to give any information or make any representations other than as contained in this Memorandum. Statements in this Memorandum are made as of the date of the initial distribution of this Memorandum unless stated otherwise, and neither the delivery of this Memorandum at any time, nor any sale hereunder, shall under any circumstances create an implication that the information contained herein is correct as of any other time subsequent to such date. Neither the Fund nor the Manager undertakes any duty to update the information in this Memorandum at any time. This Memorandum contains “forward-looking statements”

relating to, among other things, the future economic performance, plans, financial projections, objectives of management for future operations, projections of revenue and strategies of the Fund, which may be identified by the use of forward-looking terminology such as “may,” “could,” “should,” “would,” “believe,” “anticipate,” “estimate,” “expect,” “intend,” “plan” or other variations thereof and similar terms and/or expressions. The Fund and its affiliates believe that such statements are based upon reasonable assumptions. These statements, however, reflect assessments of a number of risks and uncertainties, and their actual results could differ materially from the results anticipated in these forward-looking statements. Important factors that could cause actual results to differ materially from estimates or projections contained in the forward- looking statements include, without limitation, the risks described under *Section IX – Risk Factors and Conflicts of Interest*. Potential investors should not place undue reliance on forward-looking statements, which speak only as of the date on which they were made.

This Memorandum does not constitute an offer or solicitation in any state, foreign country or other jurisdiction in which such an offer or solicitation is unlawful. The Manager and its affiliates reserve the right to modify any of the terms of the offering and the Interests described herein. The Interests are being offered and sold by the Fund only to persons who are “accredited investors” within the meaning of Regulation D promulgated under the Securities Act. An “accredited investor,” as defined in Regulation D, includes, among other things, any natural person (i) whose individual net worth, or joint net worth with that person’s spouse, exceeds

$1,000,000 or (ii) who had an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person’s spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year. The Manager does not intend to register the Fund under the Investment Company Act of 1940 (the “**Investment Company Act**“) and the parties responsible for managing the Fund do not intend to register under the Investment Advisers Act of 1940 (the “**Investment Advisers Act**“).

Please refer to *Section XV — Index of Defined Terms* of this Memorandum for an index of certain defined terms used in this Memorandum.

Prospective Investors wishing to inquire about the Fund are invited to contact the following:

Greg Fox

Chief Executive Officer Mill Green Partners, LLC

Email: [gfox@millgreenpartners.com](mailto:gfox@millgreenpartners.com)

Mill Green Opportunity Fund IV, LLC c/o Great Lakes Fund Solutions, Inc.

500 Park Avenue, Suite 114 Lake Villa, FL 60046

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**MILL GREEN OPPORTUNITY FUND IV, LLC**

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

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## I. EXECUTIVE SUMMARY

The Fund was recently formed under the laws of the State of Delaware for the exclusive purpose of carrying out the real estate investment objectives and strategies described in this Memorandum. This executive summary is not intended to be a complete discussion of the Fund and each Investor is encouraged to read this Memorandum together with the attached Operating Agreement in its entirety. An index of certain of the defined terms is included at the end of this Memorandum. See *Section XV — Index of Defined Terms.*

# *The Offering*

The Manager is seeking up to $40,000,000 in aggregate capital contributions (“**Capital Contributions**“) from Investors; provided, however, the Manager may increase the size of the Fund at its discretion. The minimum subscription by an Investor is $100,000; provided, however, the Manager may, at its discretion, approve a subscription of less than this amount. At the time of an investor’s subscription, until the initial closing (“**Initial Closing**”), the investor’s subscription amount will be held in a non-interest bearing escrow account.

The Manager and Skyway Capital Markets, LLC (the “**Placement Agent**”) will determine the Initial Closing in their sole discretion. Upon the Initial Closing, investor contributions approved by the Manager will be released into the Fund’s general working capital account. After the Initial Closing, the Manager plans to continue the Offering until the earliest of (i) the receipt of subscriptions to the Offering in an aggregate amount of $40,000,000, (ii) such earlier date that the Manager terminates the offering at its sole discretion and (iii) February 28, 2018 (or such later date after February 28, 2018 to which the Offering is extended), at which point it will have a closing on all subscriptions received and will take no further subscriptions **(“Final Closing”**). The Manager may extend the offer for an additional 90 days, but in any event the Offering will terminate no later than the close of business on May 31, 2018.

All sales commissions and formation expenses will be paid from the gross proceeds of the Offering (the **“Gross Proceeds”**). In addition, the Manager will establish a reserve for the estimated initial Current Pay Return (with the estimate based on the anticipated period of time between the Initial Closing through the sale of the first development project by the Fund, plus six months), fund expenses and Asset Management Fees from the Gross Proceeds to satisfy these costs as they arise.

# *Fund Objective*

The Fund’s investment objective (the “**Investment Objective**“) is to produce attractive risk adjusted returns for the Fund’s investors by investing in real estate development projects. The Manager expects to initially invest in a multifamily development project in Fort Myers, FL. Also, the Fund will invest in other future multifamily, student housing or grocery anchored retail development projects as they become available through five specifically identified development companies (each a “**Project Development Company**“ and collectively, the “**Project Development Companies**”) and other development companies that may be identified. Preferred Apartment Communities (“**PAC**”) (NYSE:APTS), an Atlanta based publicly traded real estate company founded by John A. Williams, has previously entered into forward purchase options to

acquire the properties being developed by the Project Development Companies (each, a **Purchase Option**”, and collectively, the “**Purchase Options**”). PAC has also provided mezzanine and bridge loans to development projects of the Project Development Companies. From June 2015 through December 2016, PAC exercised its purchase options to acquire six completed multifamily development projects from three of the Project Development Companies. Each of the development projects in which the Fund invests will have been underwritten by an affiliate of PAC, Preferred Apartment Advisors, LLC (“**PAA**”), which itself provides management and advisory and property management services to PAC and which will manage the lease-up of the specific development projects. Further, the individual multifamily development projects will enter into management agreements with Preferred Residential Management, LLC, a wholly-owned subsidiary of PAA (“**PRM**”), or in the case of student housing with Preferred Campus Management (“**PCM**”), whereby PRM or PCM will coordinate, operate and maintain each of the individual development projects. Ultimately, the development projects are subject to a Purchase Option, which if exercised by PAC, would enable the Fund to liquidate its investment in the specific development projects in an orderly fashion. If PAC brings in other multifamily, student housing or grocery anchored retail developers into its development program and provides mezzanine loans to the development projects of these developers and enters into a purchase option to acquire these development projects after stabilization, the Fund may also invest in these projects. The primary objective of the Fund will be value creation through the development and stabilization of these real estate projects.

# *Fund Strategy*

The Manager believes that the current real estate environment provides an opportunity to achieve attractive returns through a selective and carefully managed multifamily, student housing and grocery anchored retail development program. Although the development of new student housing and multifamily properties has risen, market research continues to project on a national basis that vacancy rates will remain below historical averages and rent growth will remain above historical averages. As described in “Multifamily Mid-Year Outlook 2016”, published by Freddie Mac, multifamily rental demand is expected to stay strong in the foreseeable future as a result of the following factors:

Favorable demographic trends, strength in the job market, and reduced affordability of owning a home will continue to support demand for apartment units.

Because of the improving economy in the U.S., pent-up demand has released into the market, benefiting the rental market.

More supply has entered into the market and fundamentals have moderated but are expected to remain at historically attractive levels. Vacancy rates are expected to remain close to 5% and gross income growth is expected to be 3.4% for 2016 and stronger for 2017 after the influx of new product is absorbed.

The Manager also may have the opportunity to invest in grocery anchored retail development projects. PAC, through its subsidiary New Market Properties, LLC (“**New Market**”) owned 30 grocery anchored retail centers as of September 30, 2016 in first ring suburban submarkets in major cities in the Sunbelt region of the United States. Its strategy is to own grocery anchored retail centers with grocer anchors that maintain a #1 or #2 market share and that have a growing and high relative sales per square foot store in that particular market. They also target, on a selective basis, specialty grocers such as Whole Foods, Fresh Market, Sprouts or Trader Joe’s in a market where they have a significant presence. Grocer anchors will typically have long-term leases and lenders to grocery anchored retail center construction typically require 65%-70% of the center to be pre-leased. The management team of New Market has extensive experience in grocery anchored retail and has exposure to development opportunities. The Manager believes a grocery anchored retail development opportunity that meets New Market’s ownership criteria and that PAC is providing a mezzanine loan to and entering into a purchase option to acquire after stabilization provides an attractive investment opportunity for the Fund. The expected timeline for grocery anchored retail development and stabilization is expected to be approximately nine to 12 months for construction and 15 months for stabilization, which is shorter than the expected timeline for apartment and student housing development projects.

The Fund’s investment strategy is to initially invest in a specified Class A multifamily real estate development project, subject to final due diligence by the Manager. Also, the Fund expects to invest in additional real estate development projects that will be identified in the near future by the Project Development Companies or other development companies. The Fund expects the future investment opportunities to be primarily focused on major markets in the Sunbelt and Mid-Atlantic regions of the United States. However, attractive opportunities may arise outside of this focus region with developers that have a local presence and expertise in other markets. Each real estate investment is targeted to a specific local market where the Project Development Company or other development company believes it can create value through a combination of factors that include access to investment opportunities, an understanding of the local market economy and relevant development regulations, an analysis of micro-market supply and demand characteristics, disciplined development and management processes, transaction structuring experience and capital markets expertise. In general, the Project Development Companies are targeting large cities in the Sunbelt and mid-Atlantic region and large universities that have growing enrollment and a need for additional high-quality student housing. In addition, New Market is targeting grocery anchor retail developments in first ring suburban locations with a grocer that maintains the #1 or #2 market share and have a growing and high relative sales per square foot store in that particular market or a nationally recognized specialty grocer. The Manager believes its relationships with the Project Development Companies and development opportunities presented to PAC and New Market by other development companies, as well as the involvement, financial commitment and forward purchase option of PAC, create a competitive advantage for the Fund when compared to other real estate investment alternatives.

Assuming that the Fund sells $40,000,000 of Interests in this offering, the Manager expects to invest in the identified real estate project and likely five to seven additional real estate projects that have not yet been determined. The Manager expects that the largest investment in any one project will constitute no more than approximately 25% of the total equity invested by the Fund. The Fund expects to hold its investments for a period of approximately three years after investment.

# *Manager*

The Fund’s Manager will be Mill Green Partners, LLC (“**MGP**”) (https://www.mgpfunds.com). MGP has the rights to raise the equity capital that it expects will be initially invested in the identified multifamily development project and the future projects that the Fund will invest in. MGP intends to enter into a Project Development Operating Agreement (“**PDOA**”), with each Project Development Company or other development company for each development project that will provide the Fund a membership interest in the project entity and define the Fund’s rights with regards to its membership interest. The principal of MGP is Greg Fox, CEO. Mr. Fox has 31 years of experience, knowledge and relationships in the real estate industry.

# *Association with PAC and John A. Williams*

The Fund expects to benefit from the Manager’s relationship with PAC and its management team, including John A. Williams’, experience, knowledge and relationships in the real estate and particularly the multifamily industry. Mr. Williams’ experience includes investing, developing, owning, managing, selling and operating over $5 billion of real estate related investments for over 41 years. PAC’s management team has long-term relationships with each of the Project Development Companies. Although the Project Development Companies are independently owned and managed, PAA works closely with these companies related to market identification, site identification, product design, project underwriting and construction oversight. PAA manages the lease-up of each development project. At initiation of a project, PAC enters into a forward purchase option with the respective Project Development Company, and also provides mezzanine loans to the Project Development Companies for those projects covered by its purchase option, typically providing approximately 25-28% of the total capital required in addition to the construction loan provided by independent financial institutions. As of September 30, 2016, PAC had committed $361.4 million in either mezzanine or bridge loans to the Project Development Companies’ or other development companies’ projects, comprising 4,902 apartment units and PAC has purchase options on all of these projects. PAC is a publicly traded real estate company and has a stated objective of acquiring and operating multifamily, student housing and grocery anchored retail properties in strong metropolitan markets throughout the U.S. The Manager believes that the relationship between the Fund, the Project Development Companies and PAC will be an important component to the Fund’s future success.

Each of the Project Development Companies or other development companies, PAC and PAA operate independently from each other, and are not affiliated with the Fund or the Manager. However, PAA has provided, and Manager anticipates that PAA will continue to provide, underwriting and management services to each of the development projects of the Project Development Companies and other development companies. Furthermore, PAC has provided, and the Manager anticipates that PAC will continue to provide, mezzanine and bridge loans to each of these projects. Finally, the Manager also anticipates that PAC will continue to enter into purchase options to acquire those properties financed by the Fund and the Project Development Companies or other development companies in the future.

# *Project Development Operating Agreement (“PDOA”)*

Following the Initial Closing, the Manager, on behalf of the Fund and subject to final underwriting, expects to invest in the identified multifamily development project described herein. The Manager expects each Fund investment will be structured through an investment by the Fund into a special purpose entity whose sole members would consist of the Fund (or a wholly-owned subsidiary of the Fund) and the Project Development Company (a “**Project Entity**”) or other development company. The Manager and each Project Development Company or other development company plan to enter into a Project Development Operating Agreement (“**PDOA**”), the form of which is attached to this Memorandum as Exhibit B (or, as otherwise described below, include the operative terms of the PDOA in the individual project’s organizational documents). The Fund anticipates that these agreements will provide for a predetermined preferred return and profit sharing arrangement between the Fund and each Project Development Company or other development company. Although the terms of each PDOA may vary, particularly depending on the size of the Fund’s investment, the Manager anticipates that each PDOA will provide for a 15% preferred compounded annual return to the Fund, with any remaining proceeds to be distributed to the Project Development Company or other development company and the Fund on a defined ratio.

The Project Development Company or other development company will be responsible, at its cost, for all site acquisition and predevelopment activity prior to the Fund’s investment. The Project Development Company or other development company will be entitled to receive a project development fee based on a percentage of the total cost of the project. Such fee shall not exceed the market rate for comparable services.

# *Significant Capital Contributions by the Project Development Companies or other development companies to Align with Fund Investors’ Interests*

The Project Development Companies or other development companies will also invest at least 10% of the equity capital required in project entities to be owned by the Fund on the same terms and conditions as the Fund.

# *Risk Factors and Conflicts of Interests*

Prospective Investors should carefully consider, among other factors, the matters described in *Section IX — Risk Factors and Conflicts of Interest*, which describes certain factors that could have an adverse effect on the value of the Interests in the Fund or that could impact the Fund’s ability to meet its Investment Objective and strategies. The Fund’s returns will be unpredictable, and an Investor should only invest in the Fund as part of an overall investment strategy and only if the Investor is able to withstand a total loss of its investment.

## Executive Summary of Key Terms

This executive summary is qualified in its entirety by, and must be read in conjunction with, the more detailed information included in *Section VIII- Summary of the Operating Agreement and Project Development Operating Agreements*, in this Memorandum (including the terms defined in that Section) and the Operating Agreement.

**The Fund:** Mill Green Opportunity Fund IV, LLC, a Delaware limited

liability company.

**Manager:** Mill Green Partners, LLC, a Delaware limited liability company, will serve as the Manager of the Fund. As Manager, Mill Green Partners, LLC has overall responsibility for managing the Fund and executing its investment strategies. The Manager will provide all investment management services to the Fund, including the origination of transactions, analysis, valuation and structuring, negotiation, documentation, investment management and oversight responsibilities, financial and tax reporting and compliance, and all other activities incidental to the Fund’s operations.

**Investment Objective:** To initially invest in a Class A multifamily housing development

project in Fort Myers, FL, subject to final underwriting. Also, to invest in future multifamily, student housing or grocery anchored retail projects, as they become available, of the Project Development Companies. The primary objective of the Fund will be value creation through the development, stabilization and disposition of real estate projects.

**Minimum Investment:** $100,000, subject to the Manager’s right, in its sole discretion, to

accept lesser amounts.

**Offering Amount:** “Best efforts” offering up to $40,000,000. Subscriptions will be

held in a non-interest bearing escrow account until the Initial Closing.

**Co-Investment:** The Project Development Companies or other development

companies will invest at least 10% of the project-level equity capital required.

**Offering Period:** Commencing as of the date of this PPM, the Offering will

continue until earlier of (i) the closing of $40,000,000, (ii) such earlier date that the Manager terminates the offering at its sole discretion, and (iii) February 28, 2018 (or such later date after February 28, 2018 to which the Offering is extended), at which point it will have a closing on all subscriptions received and will take no further subscriptions **(“Final Closing”**). The Manager may extend the Offering for up to 90 days, but in any event the Offering will terminate no later than the close of business on May 31, 2018.

**Subscription Documents:** To invest in the Offering, an Investor must deliver both a fully

completed and executed subscription agreement (including the Investor qualification statement), signature page to the Operating

Agreement, and related documentation in the subscription booklet (collectively, the “**Subscription Documents**“), to the Manager’s transfer agent. The Manager will have the right to accept or reject any Investor subscription or may accept an Investor subscription for a lesser amount than initially subscribed.

**Multiple Closings:** Until the Fund receives subscriptions for $40,000,000, then the

Manager shall have the right during the Offering Period either to close the Fund with the subscriptions it has received, admit additional Investors to the Fund, or accept additional subscriptions from existing Investors of the Fund at one or more subsequent closings.

**Investors:** The Investors of the Fund will be those individuals or legal

entities who properly complete, execute and return the Subscription Documents and who are accepted as Investors by the Manager. Prior to being admitted as an Investor, each individual investor and each equity owner of each such legal entity will be required to make certain representations and warranties to the Fund as set forth in the Subscription Documents

No Investor, other than the Manager, (i) will have any part in or interfere in any manner with the management or control of the Fund, and (ii) will have any authority or right to act on behalf of the membership or to bind the Fund in connection with any matter, except as expressly provided in the Operating Agreement. Except as otherwise specified in the Operating Agreement and the Subscription Documents, no Investor will have the right to vote for the election, removal or replacement of the Manager.

No Investor will be liable to creditors of the Fund for losses or debts of the Fund beyond the amount of its capital contribution.

**Investment Suitability:** The Interests are being offered without registration under the

Securities Act pursuant to exemptions provided under Section 4(2) of the Securities Act and Regulation D. As such, the Interests are being offered and sold by the Fund only to those persons who are “accredited investors” within the meaning of Regulation D promulgated under the Securities Act.

**Use of Funds:** All Investors will be required to deliver their funds by check or

wire transfer to the escrow agent simultaneously with the delivery of their executed Subscription Documents. In addition to using the funds for planned investments as outlined herein, the Fund may use the proceeds from the Offering (i) to cover Operating Expenses of the Fund and the annual Asset Management Fee (as it becomes due), (ii) to cover certain Formation Costs, (iii) to cover sales commissions of the Placement Agent (*as described in Section XI – Plan of Distribution*) and (iv) to establish a reserve to pay the initial Current Pay Return, future Operating Expenses of the Fund and Asset Management Fees.

**Fund Term:** Four years from the end of the Final Closing, subject to a

maximum of two consecutive one-year extensions upon notice to the Investors. Subject to the approval of the Investors holding at least 80% of the outstanding Interests, the Manager may extend the term for up to an additional five-year period.

**Distributions:** Distributions will be made in the following order of priority:

*Current Pay Return:* To the extent the Fund has available cash (net of reserves for expenses) and may make distributions in accordance with Delaware law, Investors will receive cash payments equal to 6% per annum, payable monthly, on their outstanding cumulative Capital Contributions (the “**Current Pay Return**”);

*Preferred Return:* 100% to Investors until the Investors (on an individual basis in proportion to the accrued Preferred Return (as defined below)) have received cumulative distributions (including the Current Pay Return) equal to:

x For the first $12 million in Capital Contributions, a 12% per annum return on their cumulative outstanding Capital

Contributions (the “**Early Investor Preferred Return**”); x For Capital Contributions after the initial $12 million, a 10% per annum return on their cumulative outstanding Capital Contributions (the “**10% Preferred Return”**, and generally with the Early Investor Preferred Return,

## the “Preferred Return”).

*Capital Return:* Next, 100% return of cumulative Capital Contributions;

*Incentive Distributions:* Thereafter, 75% to the Investors and 25% to the Manager (the

Manager’s portion, the “**Incentive Distribution**”).

**Asset Management Fee:** 1.25% of cumulative Capital Contributions less all returns of

capital, determined and payable quarterly beginning after the Initial Closing and thereafter throughout the Term of the Fund.

## FUND STRUCTURE

***Manager***

The Manager of the Fund is Mill Green Partners, LLC, a Delaware limited liability company. The Manager is owned by Greg Fox (who serves as the Managing Member), and certain unaffiliated trusts. Pursuant to the Operating Agreement, the full and entire management of the business and affairs of the Fund is vested in the Manager.

# *Fund Manager*

In addition to its management and governance responsibilities under the Operating Agreement, the Manager will also serve as “Fund Manager” under the Operating Agreement and manage the Fund’s assets. In this role, the Manager will provide all investment management services to the Fund, including the origination of transactions, analysis, valuation and structuring, negotiation, documentation, investment management and oversight responsibilities, financial and tax reporting and compliance, and all other management activities related to the Fund’s operations. As compensation for these services, the Manager will receive an annual asset management fee.



**Fund Organization Chart**



Project Development Companies or other development companies

Mill Green Partners, LLC- Manager

Investors

Mill Green

Opportunity Fund IV, LLC

Project Development

Operating Agreements

Development

Projects

Development

Agreements

## USE OF PROCEEDS; COMPENSATION AND FEES

The Fund is selling up to $40,000,000 of Interests in the Offering. The net proceeds to the Fund from the sale of the Interests in this Offering, after deducting the selling commissions and Placement Agent fees (the “**Net Proceeds**”) will be $35,400,000 if the Maximum Offering is subscribed. The following table sets forth the details of these fees and funds available for investment.

|  |  |  |
| --- | --- | --- |
|  | **Best Efforts Offering** | **Percentage of Gross Proceeds** |
| Gross Proceeds from Investors | $40,000,000 | 100% |
| Less: Selling Commissions (1) | $2,800,000 | 7.0% |
| Less: Marketing Re-Allowance fee (2) | $400,000 | 1.0% |
| Less: Managing Dealer fee (3) | $1,400,000 | 3.5% |
| **Available for Investment before reserves (4) (5) (6) (7)** | **$35,400,000** | **88.5%** |

(1)- A Selling Commission of 7% of the Gross Proceeds will be paid to the Placement Agent which it will re-allocate to the Selling Group members.

(2)- A marketing re-allowance of 1% will be paid to the Placement Agent which it will re-allocate to the Selling Group members.

(3)- The Placement Agent will receive a fee of 3.5% of Gross Proceeds for serving as the managing dealer, payable at the time of closing. The Placement Agent, as managing broker-dealer of the Offering, will be responsible for all “wholesaling fees” relating to the Selling Group.

(4)- The Manager will receive an annual management fee equal to 1.25% of the outstanding Capital Contributions. (5)- The Manager anticipates that total formation costs and other offering costs will be approximately $275,000.

(6)- The Manager will receive a one-time fee of 0.85% of the amount the Fund invests in development projects (“Acquisition Fee”).

(7)- The amount available for investment will be less to the extent that the Fund uses offering proceeds to pay operating expenses or establish reserves. Assuming that the Maximum Offering is subscribed, the Manager anticipates that approximately

$7,700,000 will be held in reserve for payment of initial Current Pay Return distributions, expected operating expenses and the Manager’s asset management fee.

The following table and discussion show all of the types of compensation, fees, income, distributions or other payments that the Fund may pay to the Manager, PAA, PRM and their respective affiliates in connection with the Fund’s organization, operation, investments and liquidation. Such arrangements have not and will not be determined through arm's-length negotiations between such parties and the Fund. The Manager has no obligation to advance funds to cover the Fund’s expenses, beyond the initial Offering and organizational expenses. However, to the extent that such advances are made, the Fund will repay such advances out of the Fund’s funds as soon as they are available, whether such funds are from the Fund’s operating revenues or third-party loans.

|  |  |  |
| --- | --- | --- |
| **Form of Compensation** | **Person(s) to Whom Paid** | **Method of Determination** |
| Formation Costs | Manager | The out-of-pocket expenses of the Manager incurred in connection with forming the Fund including, but are not limited to, legal fees, consulting fees, printing expenses, Selling Group due diligence costs and other actual organizational costs will be reimbursed by the Fund.  The foregoing costs (the “**Formation Costs**“) will be funded by the Investor’s Capital Contributions. Formation Costs are expected to be approximately  $275,000. |
| Fund-Level Management Fee | Manager | The Fund will pay to the Manager an annual asset management fee equal to 1.25% of cumulative Capital Contributions less all returns of capital, determined and payable as of the Initial Closing and thereafter quarterly throughout the Term of the Fund. |
| Investment Fee | Manager | Pursuant to the PDOA, upon the closing of an investment in an individual Project Entity by the Fund, the Project Entity (not the Fund) shall pay to the Manager an investment fee equal to 2% of the equity invested by the Fund. |
| Acquisition Fee | Manager | The Fund will pay to the Manager a one-time acquisition fee equal to 0.85% of the amount the Fund invests in the development projects. |
| Service Fees | PAA, PRM and PCM | For its management and advisory services, PAA typically does not charge a fee, other than travel and expense costs for site visits.  For its property management services, PRM and PCM typically charge a fee of approximately 4% of gross revenues. |
| Incentive Distributions | Manager | The Fund will pay the Manager 25% of the distributions after the Investors have received the Preference Return and 100% of Capital Contributions (“Incentive Distributions”). |

## MANAGER AND MANAGEMENT TEAM

In addition to the significant experience of the management team of the Manager, it will also draw on the significant experience of the Project Development Companies and PAA. Please refer to *Section VI — Fund’s Relationship with Project Development Companies, PAC and PAA* for additional information on the backgrounds of the management teams and business strategies of these companies.

# *History of the Manager*

The Manager was organized in 2014 to serve as the fund manager for a series of contemplated real estate investment funds. The principal of the Manager (who serves as its Managing Member), Greg Fox, has extensive experience in real estate development and real estate fund management and administration. The Manager has three funds under management. The amount of membership interests sold for MGOF, MGOF II and MGOF III was the full amount of membership interests offered under each fund’s Confidential Private Placement Memorandum. A summary of the timeline and amount raised for each fund is as follows:

x the Mill Green Opportunity Fund (“MGOF”), which was launched in January 2015 and

closed in May 2015 after selling $13.3 million of membership interests;

x the Mill Green Opportunity Fund II (“MGOF II”), which launched June 2015 and closed in March 2016 after selling $23.0 million of membership interests;

x the Mill Green Opportunity Fund III, LLC (“MGOF III”), which launched April 2016

and closed in February 2017 after selling $37.3 million of membership interests.

A summary of the investments made by MGOF is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Location** | **Asset Type** | **Project Development Company** |
| **Haven Lubbock** | **Lubbock, TX** | **Student Housing** | **Haven** |
| **Haven Waco** | **Waco, TX** | **Student Housing** | **Haven** |
| **Town Village** | **Atlanta, GA** | **Multifamily** | **Newport** |

A summary of the investments made by MGOF II is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Location** | **Asset Type** | **Project Development Company** |
| **Overture at Crosstown Walk** | **Tampa, FL** | **Multifamily** | **Oxford** |
| **The Encore** | **Atlanta, GA** | **Multifamily** | **Oxford** |
| **Hidden River** | **Tampa, FL** | **Multifamily** | **Oxford** |
| **City Park II** | **Charlotte, NC** | **Multifamily** | **Oxford** |
| **Bishop Street** | **Atlanta, GA** | **Multifamily** | **Newport** |
| **Palisades** | **Manassas, VA** | **Multifamily** | **Oxford** |
| **Haven Lubbock II** | **Lubbock, TX** | **Student Housing** | **Haven** |

A summary of the investments made by MGOF III is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Project** | **Location** | **Asset Type** | **Project Development Company or other development company** |
| **Haven Tradition** | **College Station, TX** | **Student Housing** | **Haven** |
| **The Altis at Wiregrass Ranch** | **Tampa, FL** | **Multifamily** | **The Altman Companies** |
| **Haven Charlotte** | **Charlotte, NC** | **Student Housing** | **Haven** |
| **University City Gateway** | **Charlotte, NC** | **Multifamily** | **Oxford** |
| **Morosgo** | **Atlanta, GA** | **Multifamily** | **Newport** |
| **Forsyth County** | **Atlanta, GA** | **Multifamily** | **360 Residential** |

# *Management Team*

Upon Initial Closing, the Fund will be the Manager’s exclusive investment vehicle for real estate development. Greg Fox will be the Chief Executive Officer of the Manager and its sole Managing Member. He has 31 years of industry experience as outlined in detail below. Brian Grasso will be the Controller of the Manager. Fund compensation for Mr. Fox and Mr. Grasso will be based substantially on the performance of the Fund. The Manager also utilizes a third party fund administration service provider that provides subscription process administration, investor database services, reporting to custodians and investors and distributions services.

# *Greg Fox, Chief Executive Officer*

Mr. Fox, age 57, is the Chief Executive Officer of Mill Green Partners, LLC. He founded Mill Green Partners, LLC in 2014, which currently has approximately $73.6 million of assets under management. He has 31 years of real estate industry experience in the areas of real estate entity financial reporting and compliance, real estate investment reporting and analysis, cash

management, financial planning, development evaluation and oversight and capital activities including acquisitions, dispositions and financings. From early-2010 to mid-2014, he served as the Chief Financial Officer for Cortland Partners, LLC (mid-2013-mid-2014) and BSR Trust, LLC. Both of these companies were privately-owned companies that owned, through various structures, and managed apartment communities in the Southeastern United States and Texas and Oklahoma. From 2003 to early 2010, Mr. Fox was an Executive Director of Morgan Stanley Real Estate Advisors, Inc. where he was responsible for all fund financial reporting and cash management for Morgan Stanley sponsored real estate funds that managed approximately $100 billion of assets. From 1996 to 2003, he was the Chief Accounting Officer (1996-2000) and CFO (2000-2003) for Post Properties, Inc. and was responsible for investor relations, financial reporting and compliance, capital planning and execution and was a member of the Investment Committee for this NYSE-listed REIT with a $2.5 billion market capitalization. Prior thereto he was a Senior Manager in Price Waterhouse’s audit practice and specialized in the real estate industry. He was formally a licensed Certified Public Accountant, currently inactive, and obtained a BS in Business Administration from Murray State University and completed post graduate studies in accounting and finance at Georgia State University as well as the Executive Education Program at the Goizueta Business School of Emory University.

# *Brian Grasso, Controller*

Mr. Grasso, age 38, is the Controller of Mill Green Partners, LLC. He has 16 years of real estate industry experience primarily in the areas of accounting, reporting and administration for REITs and large funds with institutional investors. From June 2006 to March 2016 he was an Assistant Vice President with State Street, formally part of Morgan Stanley Real Estate Advisors, Inc.

From October 2004 to June 2006 he was a Financial Advisor with Merrill Lynch in their wealth management division. From August 2001 to October 2004 he was a Senior and Staff Auditor with Ernst & Young. He is a licensed Certified Public Accountant and obtained a BBA and Masters of Accountancy from the University of Georgia.

## V. INVESTMENT OBJECTIVE AND STRATEGIES

***Investment Objective***

The Fund’s Investment Objective is to produce attractive returns for the Fund’s Investors by initially investing in a Class A multifamily development project in Fort Myers, FL, subject to final underwriting by the Manager. Also, the Fund will invest in future multifamily, student housing or grocery anchored retail development projects, as they become available, to be developed by the Project Development Companies or other development companies to be identified. The Fund’s investment objective is to produce attractive risk adjusted returns for the Fund’s investors through the development, stabilization and disposition of these projects.

# *Investment Strategies*

The Manager believes that the current real estate environment provides an opportunity to achieve attractive returns through a selective and carefully managed multifamily and student housing program. Although the development of new student housing and multifamily properties has risen, market research continues to project that nationally vacancy rates will remain below historical averages and rent growth will remain above historical averages. As described in “Multifamily Mid-Year Outlook 2016”, published by Freddie Mac, multifamily rental demand is expected to stay strong in the foreseeable future as a result of the following factors:

Favorable demographic trends, strength in the job market, and reduced affordability of owning a home will continue to support demand for apartment units.

Because of the improving economy in the U.S., pent-up demand has started to release into the market, benefiting the rental market.

More supply has entered into the market and fundamentals have moderated but are expected to remain at historically attractive levels. Vacancy rates are expected to remain close to 5% and gross income growth is expected to be 3.4% for 2016 and stronger for 2017 after the influx of new product is absorbed.

The Manager also may have the opportunity to invest in grocery anchored retail development projects. As of September 30, 2016, PAC, through its subsidiary New Market owned 30 grocery anchored retail centers in first ring suburban submarkets in major cities in the Sunbelt. Its strategy is to own grocery anchored retail centers with grocer anchors that maintain a #1 or #2 market share and that have a growing and high relative sales per square foot store in that particular market. They also target, on a selective basis, specialty grocers such as Whole Foods, Fresh Market, Sprouts or Trader Joe’s in a market where they have a significant presence. Grocer anchors will typically have long-term leases and lenders to grocery anchored retail center construction typically require 65%-70% of the center to be pre-leased. The management team of New Market has extensive experience in grocery anchored retail and has exposure to development opportunities. The Manager believes a grocery anchored retail development opportunity that meets New Market’s ownership criteria and that PAC is providing a mezzanine loan to and entering into a purchase option to acquire after stabilization provides an attractive investment opportunity for the Fund. The timeline for grocery anchored retail development and

stabilization is expected to be approximately nine to 12 months for construction and 15 months for stabilization, which is shorter than the expected time line for apartment and student housing development projects.

The Fund’s investment strategy is to invest in the identified, subject to final underwriting by the Manager, and future projects developed by the Project Development Companies or other project development companies. Each real estate investment is targeted to a specific local market where the Project Development Company or other project development company believes it can create value through access to investment opportunities, an understanding of the local market economy and relevant development regulations, an analysis of micro-market supply and demand characteristics, disciplined development and management processes, transaction structuring experience and capital markets expertise. The Fund expects the future investment opportunities to be primarily focused on major markets in the Sunbelt and Mid-Atlantic regions of the United States. However, attractive opportunities may arise outside of this focus region with developers that have a local presence and expertise in other markets. In general, the Project Development Companies are targeting large cities in the Sunbelt and mid-Atlantic regions and large universities that have growing enrollment and a need for additional high-quality student housing. In addition to the aforementioned geographic focus, New Market is targeting grocery anchored retail developments in first ring suburban locations with a grocer that maintains the #1 or #2 market share and have a growing and high relative sales per square foot store in that particular market or a nationally recognized specialty grocer. The Manager believes its relationships with the Project Development Companies and development opportunities presented to PAC and New Market by other development companies, as well as the involvement, financial commitment and forward purchase option of PAC, create a competitive advantage for the Fund when compared to other real estate investment alternatives.

Assuming that the Fund sells $40,000,000 of Interests in this offering, the Manager expects to invest in the identified real estate project and five to seven future projects to be developed by the Project Development Companies or other project development companies. The Manager estimates the largest investment in any one project will not exceed approximately 25% of the total equity invested by the Fund. The Fund expects to hold its investments for a period of approximately three years after investment.

# *Investment Process*

The Manager has the expertise and resources necessary to analyze, underwrite and structure multifamily real estate opportunities across multiple markets. In addition to its in-house resources, the Manager believes that the Fund will also benefit from its relationships with, and experience of, PAC, PAA, New Market and the Project Development Companies or other development companies at each step of the investment process, including (i) investment origination, (ii) underwriting, valuing and structuring, (iii) financing, (iv) investment approval,

(v) investment management, and (vi) disposition. The Manager has reviewed and analyzed each investment opportunity to determine it meets the Fund’s Investment Objective and strategies. In conducting its investment activities, the Fund will:

consider investments in multifamily, student housing residential and grocery anchored retail development;

seek to invest in markets with a growing and diversified economic base, employment growth and sustainable population;

for grocery anchored retail, seek to invest in projects that have a grocer anchor with a #1 or #2 market share and that have a growing and high relative sales per square foot store in that particular market with a long-term lease to the retail center and where a significant portion of the retail center is pre-leased;

analyze the local supply and demand characteristics of each market and the competitive positioning of each asset to be developed or acquired;

analyze local construction costs, property valuations and financing rates;

utilize project level debt, generally close to 65% of project costs, to improve the Fund’s returns and reduce the amount of capital invested in each project;

seek to take advantage of favorable forms of financing where available; actively manage its investments; and

opportunistically dispose of its assets to realize gains.

Note Regarding Prospective Returns

*In considering the Investment Objective and strategies of the Fund contained in this Memorandum, prospective Investors should bear in mind that past successes of management or expected performance of any investments to be made by the Fund is not necessarily indicative of actual future results, and there can be no assurance that the Fund will achieve the expected returns. In addition, while the expected returns are based on assumptions that are believed to be reasonable under current market conditions, the actual realized return on investments will depend on, among other factors, future operating results, market conditions and the value of the assets at the time of disposition, any related transaction costs and the timing and manner of sale, all of which may differ negatively from the assumptions on which expectations are based. Accordingly, the actual realized return on the Fund’s investments may differ materially from expected returns as indicated herein.*

## VI. FUND’S RELATIONSHIPS WITH PROJECT DEVELOPMENT COMPANIES, PAC AND PAA

This following section summarizes the Fund’s relationship with, and the business activities of, the Project Development Companies, PAC and PAA. Most of the key managers of each of these entities previously have been associated with John A. Williams in earlier business ventures. Individually, these business associations with Mr. Williams range from 27 to 46 years. It is anticipated that in each transaction between the Fund and a Project Development Company or other development companies, a separate legal entity (the “**Project Entity**“) will be established to develop, own and operate the project. Each Project Development Company or other development company, directly or through an affiliate, will serve as the managing member, or equivalent, of each such Project Entity. Although the Project Development Companies or other development company, PAC and PAA each operate independently from the Fund, the Manager and each other, PAC provides bridge and mezzanine financing to the Project Development Companies, and PAA serves exclusively as PAC’s underwriter and investment manager. Furthermore, PAC holds a purchase option to acquire each property developed by a Project Development Company. It is also expected that in the event PAC partners with a development company that is not a Project Development Company, PAC will have a long-term relationship with a principal or principals of the development company and knowledge of their track record.

# *Project Development Companies*

## Newport Development, LLC (https://newport-development.com)

Atlanta, GA

Business Description and Strategy

Based in Atlanta, Newport Development, LLC (“**Newport**”) was organized in 2003 as a successor to a previous partnership, Paces Development. Principals Robert Krause and Richard Stephens had worked together for years prior to forming Newport and combined have close to 50 years of development experience. Since that time, Newport has become a leader in developing premier multifamily communities that reflect the highest standards of inspired architecture and construction excellence. PAC acquired Newport’s Overton Rise project, a 294-unit Class A multifamily development in Atlanta, GA, in February 2016. MGOF, MGOF II and MGOF III, in the aggregate, have invested in three of Newport’s development projects.

## Oxford Properties, LLC (https://oxford-properties.com)

Atlanta, GA

Business Description and Strategy

Oxford Properties, LLC (“**Oxford**”) was formed in 2002 by two senior executives from Post Properties, Inc. (“Post”), Dan Faulk and Richard Denny. They retained most of the middle management staff from Post’s Atlanta development division and over time have supplemented with other personnel. Oxford functions as both the developer and general contractor on its development projects. Oxford also provides general contractor services for other developers. Oxford has completed nearly $1 billion of multifamily projects along the eastern seaboard as the developer or general contractor. PAC acquired Oxford’s City Park I, a 284-unit Class A

multifamily development in Charlotte, NC, in June 2015 and Crosstown Walk, a 342-unit Class A multifamily development in Tampa, FL, in January 2016. MGOF II and MGOF III, in the aggregate, invested in six of Oxford’s development projects.

## Mulberry Development Group, LLC

Atlanta, GA

Business Description and Strategy

Mulberry Development Group, LLC (“**Mulberry**”) was formed in 2003 by Nixon Jefferson. Mulberry is a multi-family real estate company focused on mixed-use, high-density communities in urban, in-fill locations. Mr. Jefferson is primarily engaged in the development of Class-A multifamily, market-rate conventional housing properties in major metropolitan markets throughout the Southeast. He was formally a developer for Post Properties, Inc. and has 20 years of experience in the development of multifamily projects and has been involved in nearly

$1 billion of real estate development during his career.

## 360° Residential, LLC (https://360res.com)

Atlanta, GA

Business Description and Strategy

360° Residential, LLC (“**360**”) is an Atlanta-based commercial real estate development company focusing on multifamily residential development in select core locations across the United States. The principals of the company, Clark Butler and Jeff Warshaw, bring over 41 years of combined hands on experience in multifamily development, construction and management with a total development cost of approximately $600 million. The core business of 360 is the development of projects in high barrier to entry major metropolitan areas. The current key markets of focus are: Atlanta, Southern California, South Florida and New York City. Project sites are selected based on criteria including a substantial base of business, retail, cultural and entertainment amenities. A key element of the company’s strategy is its focus on locations where there are high barriers to entry such as a limited supply of land, entitlements or other restrictions which will constrain delivery of competitive product and will inherently push value. In June 2015, PAC acquired a 308-unit Class A apartment community in Naples, FL developed by 360.

## Haven Campus Communities, LLC (https://havencampuscommunities.com)

Atlanta, GA

Business Description and Strategy

Haven Campus Communities, LLC (“**Haven**”) is a company focused on the development, management, and ownership of high quality student housing communities throughout the southeastern U.S. The management team is comprised of seasoned professionals, Steve Whisenant and Jay Williams, who have a combined 63 years of development experience. They are committed to delivering a product that meets the demands and exceeds the standards for students and their parents, educational institutions, as well as the adjoining community.

Haven places an emphasis on understanding the evolving needs of students and are determined to stay on the leading edge of this unique marketplace. This is reflected in its attention to detail with regard to design concepts and how it tailors its approach to each university market and the surrounding community. With an increasing demand for better quality student housing communities, Haven is well positioned to become one of the premier student housing community developers in the country. MGOF, MGOF II and MGOF III, in the aggregate, invested in five of Haven’s student housing development projects. PAC has purchase options to acquire two of Haven’s student housing development projects that preceded MGOF.

# *PAC*

Preferred Apartment Communities, Inc. (“**PAC**”) (NYSE: APTS) is a publicly traded Maryland corporation headquartered in Atlanta, and was formed primarily to acquire and operate multifamily properties in select targeted markets throughout the United States. PAC is a publicly traded real estate company, and as part of its business strategy, it may enter into forward purchase contracts or purchase options for to-be-built multifamily communities and may make mezzanine loans, provide deposit arrangements, or provide performance assurances, as may be necessary or appropriate, in connection with the development of multifamily communities and other properties. Substantially all of its operations are conducted through Preferred Apartment Communities Operating Partnership, LP (“**Operating Partnership**”). PAC is the general partner and Preferred Apartment Advisors, LLC (“**PAA**”) is the special limited partner of the Operating Partnership.

Quarterly and annual financial data and links to SEC filings are available on PAC’s corporate website at HTTPS://PREFERREDAPARTMENTCOMMUNITIES.COM under Investors. As of September 30, 2016, PAC had approximately $2.1 billion in total assets, $1.3 billion in total liabilities and $0.8 billion in total equity.

As of September 30, 2016, PAC’s real estate loan portfolio consists of $361.4 million of total commitments to the Project Development Companies and other development companies. Although prior Mill Green funds do not participate in all of these mezzanine and development financings as an investor, $184.1 million of these loans are to projects that prior Mill Green funds invested in.

The Fund will not invest in any potential projects that are not already subject to a Purchase Option. For each Purchase Option, PAC (or a single purpose entity owned by PAC) pays the Project Development Company a nominal non-refundable fee, with the Purchase Option itself then exercisable upon the earlier of (i) a default in the mezzanine or other PAC-provided financing, or (ii) a future date, typically two-to-three years from the date of the Purchase Option. The term of the Purchase Option typically terminates three months after PAC may first exercise the Purchase Option. The exercise price for the Purchase Option (i.e., the purchase price of the property) is set using a pre-determined formula, determined by dividing the adjusted net operating income (i.e., determined by in place leases and actual trailing 12-month operating expenses adjusted for the estimated project’s insurance expenses and property taxes), by the sum of (a) the market capitalization rate of similar properties within the project’s geographic area, plus (b) up to forty basis points (the “**Purchase Discount**”) but the Purchase Discount can vary but typically will not exceed forty basis points. PAC has agreed that, if the Fund’s and the

Project Development Company’s equity in a particular project would not be returned upon payment of the exercise price, the resulting calculation of the exercise price would partially or completely exclude the Purchase Discount (but only to the extent the inclusion of the Purchase Discount would result in a shortfall upon the exercise of the Purchase Option). If PAC and the property owner cannot agree upon the proper market capitalization rate following PAC’s notice of exercise of the Purchase Option, the parties will appoint independent appraisers to value the property.

# *New Market (https://newmarketprop.com)*

New Market Properties, LLC is a Delaware limited liability company based in Atlanta, GA and is a wholly-owned subsidiary of PAC. As of September 30, 2016, New Market owned and operated a portfolio of 30 grocery anchored shopping centers in seven Sunbelt states, and its strategy is to grow this existing portfolio in the Mid-Atlantic, Southeast and Texas. New Market targets high quality suburban markets with dominant grocers such as Publix, Kroger, Harris Teeter, and Tom Thumb with high sales per square foot stores.

# *PAA*

PAA is a Delaware limited liability company also based in Atlanta, GA. Formed in 2010, PAA acts as PAC’s external advisor or manager, pursuant to a management agreement, and is responsible for day to day operations, identification and acquisitions of investments, asset management and other operational support. As of December 31, 2016, PAA had 47 employees. Preferred Residential Management, LLC, a wholly-owned subsidiary of PAA, will serve as the property manager for each of the multifamily Project Entities pursuant to individual management agreements. Preferred Campus Management, a wholly-owned subsidiary of PAA, will serve as the property manager for each of the student housing Project Entities pursuant to individual management agreements.

## VII. FUND INVESTMENT OPPORTUNITIES

The Fund expects to initially invest in a Class A multifamily development in Fort Myers, FL. A summary of this development project is as follows:

|  |  |
| --- | --- |
|  | **Fort Myers, FL** |
| Developer | 360 Residential, LLC |
| Site Acreage | 19.2 acres |
| Project Type | Garden-style multifamily |
| Units | 224 units |
| Unit Mix | 100 1-bedroom, 114 2- bedroom and 10 3-bedroom |
| Average Rent Per Month | $1.43 psf or $1,401 per month |
| Development Description | Four four-story residential buildings with surface parking, leasing and fitness center |
| Location | Near the intersection of Summerlin Rd. and Pine Ridge Rd., one-half mile from Hwy 865 |
| Project Amenities | Resort-style pool with cabanas, fitness center, covered outdoor picnic areas, large pond with fountain, dog park, cyber café, concierge trash pick-up and package delivery |
| Project Capital: |  |
| Total Cost | $39.6 million |
| Senior Loan | $23.8 million |
| PAC Mezzanine Loan | $13.1 million |
| Equity (includes developer co-invest of 10% unless otherwise noted) | $2.7 million (Fund expected to invest  $750,000 or 27.3% of equity) |
| Estimated Period To Sale | 30 months (October 2019) |

Any funding of an investment remains subject to the Initial Closing of the Fund and the final approval by the Fund’s Manager.

## SUMMARY OF THE OPERATING AGREEMENT AND PROJECT DEVELOPMENT COMPANY AGREEMENTS

The following information is presented as a summary of principal terms only and is qualified in its entirety by reference to the Operating Agreement, a copy of which is attached hereto as Exhibit A, and the form of Project Development Operating Agreement, a copy of which is attached hereto as Exhibit B. Both the Operating Agreement and the form of Project Development Operating Agreement should be reviewed carefully. In the event that the terms described herein are inconsistent with or contrary to the terms of such agreements, the Operating Agreement and Project Development Operating Agreement shall control.

## Anticipated Terms of the Project Development Operating Agreements

*Parties:* The Manager, on behalf of the Fund, and each Project Development Company or other project development company will enter into a Project Development Operating Agreement.

*Purpose:* The Project Development Operating Agreement provides for, among other things, a predetermined preferred return and profit sharing arrangement between the Fund and each Project Development Company or other project development company, subject to certain adjustments based on, for example, the risk profile of the proposed investment and any required guarantees, as well as the respective obligations of the parties and their voting and control rights.

*Term:* Generally, the Project Development Operating Agreement remains in effect until the development project is sold and proceeds have been distributed.

*Pre-Investment Responsibilities:*

The Project Development Company or other project development company is responsible, at its cost, for all site acquisition and predevelopment activity prior to the Fund’s investment.

*Development Fee:* The Project Development Company or other project development company will be entitled to receive a project development fee based on a percentage of the total cost of the project (generally 4%). Such fee shall not exceed the market rate for comparable services.

*Other Terms:* In addition, the Project Development Operating Agreement describes the major terms, rights, representations and warranties for the parties relating to the project.

*Structure:* The Manager expects each Fund investment will be structured through an investment by the Fund into a special purpose entity whose sole members would consist of the Fund (or a wholly-owned subsidiary of the Fund) and the Project Development Company or other project development company (a “**Project Entity**”). The Project Development Company or other project development

company will then appoint a managing member or general partner for such Project Entity, which will be the “**Project Management Company**”. The sole assets of each Project Entity would be its membership interest in the individual development project.

*Investment Fee* Upon the investment by the Fund into a Project Entity, the Project Entity shall pay the Manager an investment fee equal to 2% of the equity invested by the Fund into the specific Project Entity.

*Project Entity Distributions:*

The Manager anticipates that the operating agreement for each Project Entity will provide that net distributions of proceeds, if any, of such Project Entity (after payment of applicable debt service and operating expenses and maintenance of reasonable reserves), will be paid from

1. current operating cash income of such Project Entity, and (ii) the disposition or refinancing of such Project Entity (including any proceeds from a Project Entity in which the Fund received its investment without making any capital contribution in respect thereof) will be distributed, unless modified by the Manager in its discretion prior to the investment by the Fund, in the following order of priority:

First, To the Fund and the Project Management Company, on a pro rata basis (based on their respective capital contributions to the Project Entity), until each has received an internal rate of return of 15%; and thereafter

Second, 100% to the Fund and the Project Management Company, on a pro rata basis (based on their respective capital contributions to the Project Entity), until each has received a return of its invested and unreturned capital; and thereafter

Third, (A) 50% to the Fund and (B) 50% to the applicable Project Management Company, until aggregate distributions to the Fund with respect to the applicable Fund investment (including operating distributions) equals an internal rate of return of 18%; and thereafter

Fourth, (A) 30% to the Fund and (B) 70% to the applicable Project Management Company.

In the event that PAC’s Purchase Discount would result in the Fund’s investment not being returned for a particular project, distributions would be subject to an alternate waterfall that would distribute 100% of cash available to be distributed to the Fund.

## Summary of the Terms of the Operating Agreement

*The Fund:* The Fund is a Delaware limited liability company organized pursuant to its Articles of Organization and its Operating Agreement, the principal terms of which are described herein.

*Management; Manager:*

Pursuant to the Operating Agreement, the management of the business and affairs of the Fund is vested in Mill Green Partners, LLC, the Manager. The Manager is a single-purpose entity formed for the purpose of acting as the manager of the Fund, and its owner is Greg Fox (who serves as its Managing Member), and certain unaffiliated trusts. The Manager will provide all investment management services to the Fund, including transaction origination and structuring, negotiation, documentation, investment management and oversight responsibilities and all other activities related to the Fund’s operations. Members shall not have the power to remove the Manager, unless the Manager would be deemed a “Bad Actor” pursuant to Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (unless Rule 506(d)(2)(ii), Rule 506(d)(2)(iii) or Rule 506(d)(3) would be otherwise apply). In such an event, Mill Green Partners, LLC may then be removed upon the approval of the holders of a majority of then-outstanding Interests, and Mill Green Partners, LLC would then appoint a new Manager to serve in its place, with such Manager’s appointment to be ratified by the holders of a majority of the then-outstanding Interests.

*Term:* The Fund commenced on January 13, 2017 and will continue until the Fund is dissolved upon the occurrence of any of the following events:

* 1. the sale or other disposition of all or substantially all of the Fund’s

assets other than cash and marketable securities; or

(ii) the fourth anniversary after the end of the Final Closing, provided that the Manager may, at its discretion, extend the term for up to two consecutive one-year periods. Additionally, subject to the approval of the Investors holding at least 80% of the outstanding Interests, the Manager may extend the term for up to an additional five-year period.

*Current Pay Return* To the extent the Fund has available cash (net of reserves for expenses) and may make distributions in accordance with Delaware law, Investors will be entitled to receive cash payments, payable monthly on the 15th day of the month for the prior month (or the Friday before the 15th if the 15th falls on a weekend day), equal to a 6% per annum return on their cumulative outstanding Capital Contributions (the “**Current Pay Return**”). If the Company does not

make such monthly distributions, the Current Pay Return will accrue such that the Company will pay such accrued amount to Investors at the time it makes its next distribution. The Current Pay Return represents a monthly payment against the Investor’s Preferred Return (as described below).

*Preferred Return:* In determining the allocation of distributions by the Fund of cash or cash equivalents, the Investors will be entitled to receive the following:

x For the first $12 million in initial Capital Contributions received by the Fund, a 12% per annum return on their cumulative outstanding Capital Contributions (the “**Early Investment Preferred Return**”), with payments of the Current Pay Return counting towards the Early Investor Preferred Return.

x For initial Capital Contributions received by the Fund after it has received the initial $12 million in initial Capital

Contributions, a 10% per annum return on their cumulative outstanding Capital Contribution (the “**10% Preferred Return**”), with payments of the Current Pay Return counting towards the 10% Preferred Return.

Collectively, the Early Investment Preferred Return and the 10% Preferred Return will be referenced as the “**Preferred Return**”, and will be made in proportion to the Investors’ accrued but unpaid Preferred Returns.

*Fund Distributions:* Net Fund Proceeds from the operation, refinancing and disposition of the Fund’s consolidated investments (or portion thereof), will be distributed in accordance with the priorities described below. “**Net Fund Proceeds”** include proceeds, after debt service and accrued and near term expenses including Asset Management Fees (if any) and certain Fund expenses, from (i) current operating cash income received by the Fund from the consolidated Fund investments and (ii) the disposition or refinancing of any particular Fund investment (including any proceeds from any Fund investments in which the Fund received its investment without making any capital contribution in respect thereof).

First, 100% to the Investors in accordance with their respective invested and unreturned Capital Contributions until the Investors have received their Current Pay Return;

Second, 100% to the Investors in accordance with their total invested and unreturned Capital Contributions until the Investors have received

their Preferred Return (including the Current Pay Return);

Third, 100% to the Investors in accordance with their respective invested and unreturned Capital Contributions (“**Unreturned Invested Capital**“) until the cumulative amounts distributed to the Investors reduce the Investor Unreturned Invested Capital to zero;

Fourth, thereafter, 75% to the Investors pro rata according to their relative Capital Contributions, and 25% to the Manager.

The Manager may withhold from any distributions amounts necessary for operating or funding the Fund’s investments and to create, in its discretion, appropriate reserves for Fund obligations, activities, and required tax withholdings, if any taxes paid or withheld that are allocable to one or more Investors or investments will be deemed to have been distributed to such Investors for the purposes of applying the above calculations.

Notwithstanding the foregoing, to the extent of available cash, the Manager may at its discretion, cause the Fund to make distributions from time to time to the Investors in amounts sufficient to permit the payment of the Investors’ tax obligation in respect to income allocations or for other purposes deemed appropriate by the Manager. Any such distributions shall be taken into account in making subsequent distributions to the Investors.

*Allocations of Profits and Losses:*

All items of income, gain, loss and deduction will be allocated to Investors in the manner generally consistent with the distribution procedures outlined above.

*Asset Management Fee:*

The Fund will promptly pay the Manager an Asset Management Fee equal to 1.25% per annum of cumulative Capital Contributions less all returns of capital, determined and payable as of the Initial Closing and thereafter quarterly throughout the Term of the Fund.

*Acquisition Fee:* The Fund will promptly pay the Manager a one-time Acquisition Fee equal to 0.85% of the amount the Fund invests in each development project. The Acquisition Fee will be paid as the Fund invests in each development project.

*Formation Costs:* The out-of-pocket expenses of the Manager incurred in connection with forming the Fund including, but are not limited to, legal fees, consulting fees, printing expenses, Selling Group due diligence costs and other actual organizational costs will be reimbursed by the Fund.

The foregoing costs (the “**Formation Costs**“) will be funded by the Investor’s Capital Contributions. Formation Costs are expected to be approximately $275,000.

*Operating Expenses:* Except as provided below, the Fund will bear and be charged with its share of all other costs and expenses of the Fund’s activities and operations, including, without limitation:

1. all fees, costs and expenses, if any, incurred in acquiring, owning, operating, developing, negotiating, structuring, evaluating, holding, insuring, maintaining, repairing, rehabilitating, renovating, remediating, leasing, financing, refinancing, disposing of or otherwise dealing with Fund investments, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto, and the costs of rendering financial assistance to or arranging for financing for any assets or businesses constituting Fund investments;
2. all fees, costs and expenses, if any, incurred in monitoring Fund investments, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto;
3. all fees, costs and expenses incurred in evaluating, developing, renovating, negotiating, structuring, acquiring, financing, disposing of or otherwise dealing with any investment pursued for the Fund in which the Fund does not invest, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto, and the costs of rendering financial assistance to or arranging for financing for any assets or businesses constituting any such investment;
4. taxes of the Fund, fees of auditors, counsel and other advisors of the Fund, insurance costs of the Fund, the Manager, and litigation costs of the Fund;

(v) administrative expenses related to the Fund’s operation, including without limitation the fees and expenses of accountants, lawyers and other professionals incurred in connection with the Fund’s financial reporting, legal opinions and tax return preparation, as well as expenses associated with a third-party transfer agent and the distribution of reports and notices to the Investors, but specifically

excluding the Manager’s overhead expenses;

1. interest expenses, brokerage commissions and other investment costs incurred by or on behalf of the Fund;
2. all fees, costs and expenses of consultants to assess, evaluate, appraise, plan, design, obtain permits, process applications, repair, replace, renovate, and otherwise operate any Fund investment;
3. all other customary expenses;
4. the Asset Management Fee and Acquisition Fee; and
5. amounts to be contributed or advanced to any Fund investment for the purpose of such entity or investment paying any cost of the type described in the foregoing clauses (i) through (x) (such expenses, collectively, the “**Operating Expenses**“).

To the extent any Operating Expenses are paid by the Manager, such Operating Expenses shall be reimbursed by the Fund.

The Manager will be permitted to engage third parties and will be permitted to pay such third parties’ fees and reimbursable expenses at market rates prevailing in the market where the Fund investment is located, as described below. In addition, the Manager will be permitted to engage affiliated parties and will be permitted to pay such parties on the terms provided below.

The Manager will be permitted to enter into financing arrangements with third parties to fund Operating Expenses, which financing arrangements may be secured by a security interest in the Fund’s assets.

Except as provided for herein, the Manager will be responsible for the expenses of its own operations, including rent, salaries, furniture and fixtures, and other office equipment.

*Related Party Loans:* The Manager or any affiliate thereof may (but will not be required to) lend funds to the Fund on an unsecured basis or secured by the Fund’s assets when and as needed, and the Manager or affiliate who loans funds to the Fund shall be treated, in respect of such loan(s), as a creditor of the Fund. Such loans will be repaid as and when the Fund has funds available therefore, and such loans and interest thereon will constitute obligations of the Fund senior to the Interests. Interest will accrue on such loans at a rate equal to the greater of the prime rate (as published by the *Wall Street Journal* from time to time), as adjusted from time to time, plus three percent, or the rate charged to the

Manager or its affiliate to borrow such funds to be loaned to the Fund.

*Transfer of Interests:* An Investor may not sell, assign or transfer any interest in the Fund without the prior written consent of the Manager, which consent will not be unreasonably withheld. Such sale, transfer or assignment (other than any transfer or assignment to an immediate family member of an Investor or to an entity controlled by such Investor effected solely for estate planning purposes) shall be subject to a right of first refusal, on the same economic terms, by the Fund or, if the Fund declines, by the Manager.

*Withdrawal:* No Investor will be permitted to withdraw from the Fund or to withdraw any portion of its capital account.

*Indemnification:* The Fund will indemnify and hold harmless the Manager and its affiliates and their respective directors, officers and employees, (each an “**Indemnitee**“) from and against liabilities arising in connection with the Fund, provided that the Fund’s obligations shall not apply to the Indemnitee’s intentional misconduct, knowing violation of law or any transaction for which the Indemnitee received a personal benefit in violation or breach of any provision of the Operating Agreement. Indemnitees will have the benefit of certain provisions that limit their liability to the Fund which parallel the foregoing indemnification provisions.

*Reports:* The Manager will use reasonable efforts to send all Investors an annual, audited financial statement of the Fund within 120 days after the end of each calendar year beginning with the year in which the Fund has its Final Closing. However, the Fund’s first audited financial statement will include all periods since the Fund’s inception. In addition, the Manager will also send the Investors, on a quarterly basis, summary descriptions and performance data of the investments made by the Fund within 60 days after quarter-end beginning after the Final Closing.

*Amendments:* The Operating Agreement may generally be amended by the Manager with the approval from Investors holding no less than 66% of the total outstanding Interests. Certain provisions of the Operating Agreement may, as provided therein, be amended without Investor approval. With respect to amendments to the Operating Agreement requiring Investor approval, the Operating Agreement provides that an Investor is deemed to have approved any requested Operating Agreement amendment for which approval is required in writing and with respect to which such Investor fails to respond in writing within the required period of time.

## RISK FACTORS AND CONFLICTS OF INTEREST

Prospective Investors should carefully consider, among other factors, the matters described below, each of which could have an adverse effect on the value of the Interests in the Fund. As a result of these factors, as well as other risks inherent in any investment or set forth elsewhere in this Memorandum (see, for example, *Section X — Certain Tax and ERISA Matters*), there can be no assurance that the Fund will meet its Investment Objective or otherwise be able to successfully carry out its investment program. The Fund’s returns will be unpredictable. An Investor should only invest in the Fund as part of an overall investment strategy and only if the Investor is able to withstand a total loss of its investment.

# *Risk Factors*

Investment-Related Risks

***No Ability to Review Fund’s Past Performance.*** The Fund was organized in 2017 and has not had any operations to date. Accordingly, there is no operating history or track record for Investors to review. Other than as described in this Memorandum, prospective Investors will not be able to evaluate for themselves the merits of any proposed investments by the Fund prior to entering into subscription commitments, unless this Memorandum is amended or supplemented with information regarding such proposed investments which the Manager assumes no obligation or duty. The Manager will have complete discretion regarding investments in properties by the Fund, subject to the Fund’s Operating Agreement and the Fund’s Investment Objective. The Manager’s past performance with prior funds is not is not necessarily indicative of actual future results of the Fund. The Sponsor’s first fund was launched in 2015 and has not yet liquidated any of its investments. Accordingly, there is no track record for Investors to review.

***Nature of Investment.*** An investment in the Fund requires a long-term commitment, with no certainty of return. There may be little or no near-term cash flow available to the Investors. Since the Fund will only make an estimated six to eight investments and since the investments may involve a high degree of risk, poor performance by one or a few of the investments could severely affect the total returns to Investors. Additionally, despite their experience in the real estate industry, the past performance of the Manager’s principal is not a guarantee of future results.

***Reliance on Key Personnel.*** The Manager’s ability to manage successfully the Fund’s affairs will depend on the Manager’s key executive. The Manager will also rely to some degree on the experience, relationships and expertise of the principals of the Project Development Companies or other project development companies, PAC, New Market and PAA. There can be no assurance that any of the key personnel will continue to be able to carry on his current duties throughout the term of the Fund, or that any replacement for him will perform as well.

***No Guarantee as to the Exercise of Purchase Options.*** Although PAC has informed the Manager that it intends to exercise each of its purchase options, it is not required to do so, and its prior acquisitions are not indicative of future actions. As such, there is no guarantee that the Project Entities will be purchased by PAC, and in the event that the Project Entities must be

liquidated or sold to an independent third party, the Project Entity (and the Fund’s potential return for such Project Entity) could be materially and adversely affected.

***Lack of Liquidity of Investments.*** The investments to be made by the Fund are likely to be illiquid. Illiquidity may result from the absence of an established market for the investments, as well as legal, contractual or other restrictions on their sale by the Project Entity. Dispositions of investments may be subject to contractual and other limitations on transfer or other restrictions that would interfere with subsequent sales of such investments or adversely affect the terms that could be obtained upon any disposition thereof. Real estate investments by their nature are often difficult or time-consuming to liquidate.

***Restrictions on Interests under Applicable Securities Laws.*** Interests in the Fund will not be registered under the Securities Act or any other securities law and ordinarily will not be transferable. In addition, Interests may not be sold, transferred (except to certain affiliates) or assigned without the prior written consent of the Manager in its reasonable discretion. There is no market for Interests in the Fund, and none is expected to develop. Therefore, each prospective Investor must consider its investment to be illiquid and an investment in the Fund is not appropriate for Investors needing liquidity.

***Lack of Diversification.*** The Fund will primarily invest in a single property sub-type, and there is no certainty that the markets in which the Fund will invest will provide economic diversification. The Fund’s revenue from, and the value of, its investments located in any single market may be affected disproportionately by a number of factors, including local real estate conditions (such as oversupply or reduced demand) and the local economic climate. Business layoffs, downsizing, industry slowdowns, changing demographics, and other factors may adversely impact the local economic climate. A downturn in either the local economy or in general real estate conditions for any market in which the Fund’s investments are concentrated could adversely affect the Fund’s financial condition, results of operations, cash flow, and its ability to make distributions to the Investors.

***Unspecified Investments and Lack of Investor Control***. Except for the Fund’s initial identified investment in Fort Myers, FL, the net proceeds of this offering will be invested in projects or investments that will not be identified to prospective investors prior to their investment. In addition, the identified investments are subject to continuing due diligence by the Manager and the Manager, at its sole discretion, may decide not to invest in these projects. Accordingly, prospective investors must rely on the judgment and ability of the Manager with respect to the selection of property investments and the management of the Fund’s affairs. Investors will not have the opportunity to evaluate for themselves the relevant financial and other information that will be utilized by the Manager in its selection of investments. The Fund is a newly formed entity with little or no operating history upon which prospective investors can evaluate anticipated performance, and the past performance of investments managed by the Manager cannot be relied upon as an indication of the future results of an investment in the Fund. As a result, no assurance can be given that the Fund will be successful in identifying additional suitable investments or that, if such investments are made, the objectives of the Fund will be achieved. In addition, the Investors will not make decisions with respect to the management, disposition or other realization of any investments, or other decisions regarding the Fund’s business and affairs.

***Lack of Management Rights.*** Investors will have no opportunity to control the day-to-day operation, including investment and disposition decisions, of the Fund. The Manager will have sole and absolute discretion in structuring, negotiating and purchasing, financing and eventually divesting investments on behalf of the Fund. The Manager and its affiliates will make all acquisition decisions. Consequently, the Investors will not have the right to evaluate for themselves the merits of particular investments prior to the Fund’s making such investments.

***Risks Associated with Real Estate Transactions.*** Investors will be relying on the ability of the Fund and the Manager to identify and evaluate the proper investments to be made by the Fund. Additionally, because such investments may span over a substantial period of time, the Fund faces the risks of changes in long-term interest rates and adverse changes in the real estate markets. Even if the investments of the Fund are successful, the Preferred Return may not be realized by the Investors.

***Speculative Nature of Investments.*** The investments to be made by the Fund are speculative in nature, and the possibility of partial or total loss of capital will exist. Investors should not subscribe to or invest in the Fund unless they can readily bear the consequences of such loss.

***Asset Valuations.*** With certain limited exceptions, valuations of current income and disposition proceeds with respect to investments will be determined by the Manager and will be final and conclusive to all Investors. If distributions upon the termination of the Fund are made in assets other than cash, the amount of any such distribution will be accounted for at the fair market value of such assets, with certain limited exceptions, as determined by the Manager in accordance with procedures set forth in the Operating Agreement.

***Limited Recourse to Manager; Indemnification.*** The Operating Agreement will limit the circumstances under which the Manager and its affiliates can be held liable to the Fund. As a result, Investors may have a more limited right of action in certain cases than they would in the absence of those provisions. Certain exculpation and indemnification provisions contained in the Operating Agreement may limit the rights of action otherwise available to the Investors and other parties against the Manager or affiliate of the Manager absent such a limitation in the Operating Agreement.

***Dilution in Value of Units.*** Investors will put up 100% of the capitalization of the Fund pursuant to this Offering. But after distributing the Preferred Return and 100% of the Investor’s cumulative Capital Contributions, subsequent distributions by the Fund shall be allocated among the Investors and the Manager such that after Investors have achieved their Preferred Return (and their Unreturned Invested Capital), the Manager will receive 25% of all subsequent distributions without having made an initial capital contribution.

***No Minimum Offering.*** The Offering does not have a minimum subscriptions requirement and accordingly, the Fund and the Placement Agent may hold an initial closing of the Offering at any time after accepting a subscription. If the Fund is unable to raise sufficient capital in the Offering, it may not able to achieve its business goals as set forth in this Memorandum.

***Liability for Return of Distributions.*** If the Fund is otherwise unable to meet its obligations, the Investors may, under applicable laws or applicable provisions of the Operating Agreement, be

obligated to return, with interest, cash distributions previously received by them to the extent such distributions are deemed to constitute a return of their capital contributions or are deemed to have been wrongfully paid to them (either under applicable law or in contravention of the Operating Agreement). In addition, an Investor may be liable under applicable federal and state bankruptcy or insolvency laws to return a distribution made by the Fund with respect to an investment that becomes subject to bankruptcy or insolvency proceedings.

***Phantom Income; U.S. Federal Income Tax Obligations.*** The Fund is treated as a partnership for U.S. federal income tax purposes, and therefore, will not be subject to federal income tax. Each member of the Fund must report on such member’s federal income tax return the member’s allocable share of the Fund’s income, gains, losses, deductions and credits. Distributions are subject to the discretion of the Manager. Accordingly, although the Manager intends to make annual tax distributions, the Fund is not required to make any such distributions. As such, the taxable income and gains allocable to a member may exceed the cash distributions (if any) to such member, and to the extent that tax liabilities arising from taxable income and gains of profits of the Fund exceed any cash distributions from the Fund, such excess would result in a net out-of-pocket tax payment by a member to the applicable taxing authority.

***Tax Risks in General.*** An investment in the Fund involves complex federal, state and local income tax considerations that will differ for each prospective investor. A portion of a tax- exempt United States Person’s allocable share of income from the Fund may constitute UBTI in the hands of such investor. A Non-United States Investor may be treated as engaged in a United States trade or business by reason of its interest in the Fund. In addition, gain from the sale or disposition of an interest in a United States real property interest (as defined in the Code) will generally be treated as effectively connected with a United States trade or business. Non-United States Investors may wish to consider establishing a vehicle through which to invest in the Fund. Furthermore, all investors may become subject to state and local income or franchise taxes in jurisdictions where the Fund acquires real estate or otherwise conducts activities or is deemed to be engaged in business. Investors may be subject to tax on Fund income even if distributions are not made by the Fund. Each prospective investor should review the discussion in *Section X- Certain Tax and ERISA Matters* and consult with its own tax advisor with respect to the federal, state, local and foreign tax considerations of an investment in the Fund.

***Investments Longer than Term.*** The Fund may make investments that may not be advantageously disposed of prior to the date that the Fund will be dissolved, either by expiration of the Fund’s term or otherwise. Although the Manager expects that investments will be disposed of prior to dissolution or be suitable for in-kind distribution at dissolution, the Manager has a limited ability to extend the term of the Fund and the Fund may have to sell, distribute or otherwise dispose of investments at a disadvantageous time as a result of dissolution.

***Loss of Investment Company Act and Investment Advisers Act Exemptions.*** The Fund and the Manager at all times intend to conduct their business so as not to become required to register as an investment company under the Investment Company Act or as an investment adviser under the Investment Advisers Act, but there can be no assurance that they will be able to do so. If the Manager fails to qualify for an exemption from such registrations, the Manager might be unable to conduct the business as described herein, and such failure could have a material adverse effect on the Fund.

***Compliance with Rules and Regulations.*** In response to increased regulatory concerns with respect to the sources of funds used in investments and other activities, the Fund may request prospective and existing Investors to provide additional documentation verifying, among other things, such Investor’s identity, including the identity of such Investor’s owners, stockholders and/or stakeholders, and the source and type of funds used to purchase its Interest. The Manager may decline to accept a subscription if this information is not provided or on the basis of such information that is provided. Requests for documentation may be made at any time during which an Investor holds an Interest. The Manager may be required to provide this information, or report the failure to comply with such requests, to governmental authorities, in certain circumstances without notifying the Investor that the information has been provided. The Manager will take such steps as it determines may be necessary to comply with applicable laws, rules, regulations, orders, directives, special measures that may be required by government regulators or interpretation thereof by the appropriate regulatory authority having jurisdiction, and to which the Fund or the Manager is subject, including, with the opinion of counsel, requiring an Investor to stop making additional contributions of capital to the Fund, requiring an Investor to deposit distributions to which such would otherwise be entitled into an escrow account or causing the withdrawal of an Investor from the Fund.

***Bankruptcy Considerations.*** Investments made in assets operating in workout modes or under Chapter 11 of the U.S. Bankruptcy Code could, if the Fund inappropriately exercises control over the management and policies of the debtors, be subordinated or disallowed, and the Fund could be liable to third parties in such circumstances. Furthermore, distributions made to the Fund in respect of such investments, and distributions by the Fund to the Investors, could be recovered if such distributions are found to be a fraudulent conveyance or preferential payment under concepts of applicable bankruptcy laws.

Real Estate Related Risks

***General Real Estate Risks.*** Real property investments are subject to varying degrees of risk. The yields available from equity investments in real estate depend upon the amount of income earned and capital appreciation generated by the related properties as well as the expenses incurred in connection therewith. If the Fund’s investments do not generate income sufficient to meet operating expenses, then the Fund’s ability to make distributions to the Investors could be adversely affected. Income from, and the value of, the Fund’s investments may be adversely affected by the general economic climate, local conditions such as oversupply of real estate space or a reduction in demand for real estate space in the areas in which they are located, the attractiveness of the properties to potential tenants, competition from other properties, the Fund’s ability to provide adequate maintenance and insurance and increases in operating costs (including insurance premiums, utilities and real estate taxes). In addition, revenues from properties and real estate values are affected by such factors as the cost of compliance with regulations and the potential for liability under applicable laws, including changes in tax laws, and are also affected by interest rate levels and the availability of financing. Certain significant expenditures associated with an investment in real estate (such as mortgage payments, real estate taxes and maintenance costs) generally do not decline when circumstances cause a reduction in income from the property.

***Leverage and Interest Rates.*** The investments will likely utilize a leveraged capital structure, in which case a third-party typically would be entitled to cash flow generated by such investments prior to the Fund receiving a return. Fluctuating or rising interest rates may adversely affect the ability of the Fund to successfully acquire investments and may also adversely affect the performance of the investments. Use of borrowed funds to leverage acquisitions involves a high degree of financial risk and can amplify the effect of any increase or decrease in value of an investment and will increase the exposure of the investments to adverse economic factors, such as fluctuations in interest rates, downturns in the local economy in which the investments are located or deterioration in the condition of the investments.

***Possible Inability to Complete Dispositions on Advantageous Terms.*** Although each of the Project Entities is subject to the Purchase Option, as there is no guarantee that PAC will exercise such option, the Fund’s ability to dispose of properties on advantageous terms will remain dependent upon certain factors beyond its control, including competition from other real estate owners that are attempting to dispose of similar properties, and the availability of financing on attractive terms for potential buyers of the properties. The Fund’s inability to dispose of its properties on favorable terms could have an adverse effect on the Fund’s financial condition, results of operations, cash flow, and ability to make distributions to Investors.

***Environmental Considerations.*** As is the case with any holder of real estate investments, the Fund could face substantial risk of loss from claims based on environmental problems associated with the investments. As an investor in real property, if the Fund is deemed to have exercised “control” over the operation or management of the property, the Fund may face liabilities associated with past or present environmental damage or contamination. The Fund also faces the risk of possible increased local, state and federal environmental regulations. Changes in environmental regulations could increase the operating expenses of investments or even force a complete change in the use of the real property in which the Fund invests.

***Uninsured Losses.*** The Project Management Company typically will arrange for comprehensive insurance, including liability, fire, extended coverage and rental loss insurance, which is customarily obtained for the properties in which the Fund makes an investment given the relative risk of loss, the cost of such coverage and industry practice. There are certain types of losses, such as acts of war, terrorism, hurricanes, floods, or seismic activity, which now or in the future may be uninsurable or not economically insurable. Inflation, changes in building or zoning codes and ordinances, environmental considerations, and other factors may also make it infeasible to use insurance proceeds to replace an asset if it is damaged or destroyed. If an uninsured property loss or a property loss in excess of insured limits were to occur, the Fund could lose its capital invested in the affected property, as well as the anticipated future revenues from such property.

***Development Risks.*** The Fund will be acquiring equity interests in new construction projects that require development. The Fund will be subject to the risks normally associated with such activities. Such risks include, without limitation, risks relating to the availability and timely receipt of entitlements, zoning and other regulatory approvals, the cost and timely completion of construction (including risks beyond the control of the Fund, such as weather or labor conditions or material shortages) and the availability of both construction and permanent financing on favorable terms. These risks could result in substantial unanticipated delays or expenses and,

under certain circumstances, could prevent completion of development activities once undertaken, any of which could have an adverse effect on the investment and on the amount of funds available for distribution to the Investors.

***Costs of Compliance with Americans with Disabilities Act.*** Under the Americans with Disabilities Act of 1990 (the “**ADA**“), all places of public accommodation are required to meet certain federal requirements related to access and use by disabled persons. Compliance with the ADA might require removal of structural barriers to handicapped access in certain public areas where such removal is “readily achievable.” Noncompliance with the ADA could result in the imposition of fines or an award of damages to private litigants. If required changes involve a greater amount of expenditures than the Fund or the Project Management Company anticipates when a project is developed or acquired, or if the changes must be made on a more accelerated schedule than the Fund or the Project Management Company anticipates, then the ability of the Project Management Company to pay returns to the Fund and, similarly, the ability of the Fund to pay Investors could be adversely affected.

Conflicts of Interest

***Different Financial Incentives between the Ownership of the Project Entities.*** The Project Entities will be owned and operated through a special purpose entity formed between the Fund and a Project Development Company or other project development company, with the Project Development Company or other project development company serving as the Project Entity’s managing member. In addition, by virtue of its Purchase Option and its rights under its mezzanine or bridge financing arrangements with the Project Development Companies or other project development companies, PAC will have certain controls and rights over a Project Entities’ operations, including, but not limited to, the maintenance of certain financial covenants and development milestones. Conflicts of interest between the Fund and each Project Development Company or other project development company could arise with respect to each Project Entity based on the respective ownership, equity and management rights each party has with respect to such Entity. Furthermore, PAC and the Fund may have certain conflicts of interest with respect to each Project Entity due to PAC’s status as both lender and potential acquirer of each such investment, including, but not limited to, certain actions and decisions related to ongoing financings and the exercise (or timing of any exercise) of the Purchase Option.

***Sharing of Profit Interest and Manager’s Incentive.*** Since the Manager will receive a portion of the Fund’s profits after returning the Preferred Return to the Investors, the Manager may have an incentive to make more speculative investments on behalf of the Fund than it would otherwise make in the absence of such performance-based compensation. In addition, the method of calculating the amount of participation in the Fund’s profits may result in conflicts of interest between the Manager, on the one hand, and the other Investors, on the other hand, with respect to the management and disposition of investments and the determination of the timing and amount of distributions by the Fund.

***Management of the Fund.*** It is expected that the Manager, as the asset manager, together with the Project Development Companies or other project development companies will devote substantial time and effort to the Fund. However, the Manager and the Project Development Companies or other project development companies may work on various projects not involving

the Fund, and conflicts of interest may arise in allocating time, services or functions of such parties. Furthermore, upon the investment by the Fund in a Project Entity, the Manager will also receive an investment fee equal to 2% of the equity invested by the Fund in such Project Entity. As such, the Manager will have the incentive to invest a greater amount of the Fund’s capital in a number of Project Entities, which could result in conflicts of interest between the Manager, on the one hand, and the Investors, on the other hand, with respect to the timing, scope and suitability of certain investments.

***Allocation of Time of Manager and Allocation of Investment Opportunities.*** Subject to the terms of the Operating Agreement, the Manager may form additional funds or ventures or serve as fund manager for other client accounts with investment objectives and strategies substantially similar to those of the Fund. The principals of the Manager and its affiliates may have investments in certain of the entities which they manage which exceed their investments in the Fund. Further, the Manager and its affiliates may engage in other business activities unrelated to the Fund. As a result of the foregoing, the Manager and its affiliates may have conflicts of interest in allocating their time and activity between the Fund and other entities or activities and in allocating investments among the Fund and other entities.

***Determination of Reserves.*** The amount of net cash flow available for distribution to the Investors is subject to, among other things, the determination by the Manager, in its discretion, of reserves for the Fund’s liabilities. Because these reserves may be applied to satisfy Fund obligations including, without limitation, fees and/or reimbursements to the Manager and/or its affiliates, the Manager may elect to maintain higher reserves (as opposed to distributing net cash flow to the Investors) in order to ensure that the foregoing obligations will be satisfied. Any such increased reserves will reduce or defer any cash flow distributions that would otherwise be made to the Investors.

***Compensation to the Manager.*** The Manager will receive substantial fees for services rendered to the Fund, and the Manager will also be entitled to be reimbursed for out-of-pocket expenses incurred in connection with the business or affairs of the Fund. Although the Manager believes that these fees are consistent with current practices in the industry, the fees were not the result of arm’s length negotiations. The fees payable to the Manager, including the Asset Management Fee and Acquisition Fee, as contractual liabilities, will be paid without regard to the payment of any distributions to Investors (including the Preferred Return). The Asset Management Fee is based on funds under management and the Acquisition Fee is based on the Fund’s investments in development projects. The Manager will receive such fees, whether or not the Fund’s investments operate profitably. These fees (like other operating expenses) reduce the amount of cash that otherwise would be available for payment of the Preferred Return and other payments to the Investors. Further, there is a conflict of interest with respect to the payment of the foregoing fees since the Manager may be motivated to establish higher reserves than necessary for the Fund to ensure that the foregoing fees will be paid. In addition, the Manager may have incentives to cause the Fund to pay the foregoing fees to the Manager to the detriment of other third party creditors of the Fund. Any of the foregoing decisions may be detrimental to the Investors and may reduce the return of or any return on the investments made by the Investors pursuant to this private placement.

***No Separate Counsel.*** Foley & Lardner LLP will act as legal counsel to the Fund and the Manager. Separate counsel has not been engaged to act on behalf of investors in the Fund.

***Defaults by Others and Third Party Involvement.*** The Fund may co-invest with a Project Development Company or other project development company, PAC or third parties through partnerships, joint ventures or other entities. Such investments may involve conflicts of interests and risks not present in investments where a third party is not involved, including the risk that a partner or a co-venturer of the Fund might at any time have economic or business interests or goals that are inconsistent with those of the Fund, may be in a position to take action contrary to the Fund’s Investment Objective or strategies or may fail to satisfy certain delegated responsibilities such as financial statement and tax return preparation in a timely fashion. In addition, the Fund may be liable for actions of its partners or co-venturers.

***Separate and Distinct Entities.*** The Manager is a separate and distinct entity, and, except for certain contractual obligations set forth in the Operating Agreement, is not required to provide services to the Fund. Therefore, there can be no assurance that the Manager will dedicate sufficient time to the Fund necessary for the Fund to carry on its operations. Failure of the Manager to provide sufficient time to the Fund may have a substantial adverse effect on the Fund’s performance.

***Debt Guarantees.*** Certain principals of the Project Development Companies or other project development companies may provide personal guarantees in connection with the financing of the acquisition, operation and disposition of various projects. A conflict of interest may exist based on the inability to meet the terms of the financing obligations or the acceptable terms the principal is willing to accept to refinance or retire such obligations.

***Lack of Regulatory Oversight.*** While the Fund may be considered similar to an investment company, it is not required to register with the SEC as such under the Investment Company Act. Accordingly, the Fund is not subject to the limitations imposed by the Investment Company Act regarding the amount of leverage in which the Fund could engage and the relationships and transactions between and among the Fund, the Manager and other affiliates. Further, the Manager is not currently registered as an investment adviser with the SEC under the Investment Advisers Act and will not be subject to SEC oversight or regulation or subject to the requirements of the Investment Advisers Act.

## CERTAIN TAX AND ERISA MATTERS

The federal income tax aspects of acquiring and holding an Interest in the Fund are based upon the Internal Revenue Code of 1986, as amended (the “**Code**“), current United States Department of the Treasury (the “**Treasury**“) regulations promulgated thereunder (the “**Regulations**“), current positions of the Internal Revenue Service (the “**Service**“) contained in revenue rulings and revenue procedures, other current administrative positions of the Service, and existing judicial decisions as of the date of this Memorandum. Any of these factors could change at any time, either prospectively or retroactively, and such changes could materially affect the statements made herein and have adverse effects on the tax consequences of investment in the Fund. Furthermore, no assurance can be given that future legislative enactments will not modify, possibly on a retroactive basis, the legal basis of the views expressed herein.

It is impractical to present a detailed explanation of all aspects of the federal, state and local tax laws which may affect the Fund or all aspects of the tax consequences to an Investor. The federal income tax considerations discussed below are necessarily general, and their application may vary depending upon an Investor’s particular circumstances.

The Fund does not intend to request a ruling from the Service with respect to any of the federal income tax matters discussed below, and on certain matters, no ruling could be obtained even if requested.

## THIS DISCUSSION WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. THIS DISCUSSION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE INTERESTS IN THE FUND TO INVESTORS. EACH INVESTOR IS URGED TO CONSULT AND RELY UPON SUCH INVESTOR’S OWN TAX ADVISOR WITH RESPECT TO THE FEDERAL, STATE AND LOCAL TAX CONSEQUENCES ARISING FROM THE PURCHASE OF INTERESTS. NOTHING IN THIS MEMORANDUM (OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE MANAGER, ITS AFFILIATES, EMPLOYEES OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING) IS OR SHOULD BE CONSTRUED AS LEGAL OR TAX ADVICE. AN INVESTOR SHOULD BE AWARE THAT THE SERVICE MAY NOT AGREE WITH ALL TAX POSITIONS TAKEN BY THE FUND AND THAT LEGISLATIVE, ADMINISTRATIVE OR COURT DECISIONS MAY REDUCE OR ELIMINATE THE ANTICIPATED OR CLAIMED TAX BENEFITS OF THE INVESTMENT TO A MEMBER, POSSIBLY RESULTING IN A MEMBER HAVING TAX DEFICIENCIES, AND INCURRING PENALTIES AND INTEREST THEREON.

This description of the tax considerations of an investment in the Fund does not guarantee the tax results of an investment in the Fund, nor does it have any binding effect or official status of any kind. No assurance can be given that the conclusions described herein would be sustained by a court if contested by the Service or that a court would hold that there is “substantial authority” for the positions taken by the Fund with respect to any tax issues. See *Section X — Certain Tax and ERISA Matters — Penalties and Interest on Tax Deficiencies* concerning penalties for substantial understatement of income taxes. An Investor should rely upon its own judgment and

that of its tax advisors as to the likelihood of the application thereof and the risk of penalty thereunder. It should also be noted that this discussion is premised on the federal income tax law as it exists as of the date of this Memorandum.

***Classification as a Partnership for Tax Purposes.*** Certain of the tax consequences from an investment in the Fund depend upon the Fund’s classification for federal income tax purposes as a partnership, rather than as an association taxable as a corporation. If the Fund is treated for federal income tax purposes as an association taxable as a corporation in any taxable year, it would have to pay tax on its taxable income; state and local income taxes could be imposed upon the Fund and any losses of the Fund would not pass through to an Investor and be reportable by an Investor on its separate income tax return. Further, any distribution by the Fund to an Investor would be classified as “portfolio income” for individual Investors and would be taxable at ordinary income rates to the extent of the Fund’s current or accumulated earnings and profits. Such distributions would not be deductible by the Fund in computing its taxable income.

Current Treasury Regulations permit, to some extent, an elective system of entity classification. Under the Regulations, a U.S. business entity that is not formed under a federal or state statute that describes or refers to the entity as “incorporated, as a corporation, body corporate, or body politic” will be treated as an “eligible entity,” that can utilize the elective regime of the regulations. Regulations Section 301.7701-3(a). Unless the entity elects otherwise, a U.S. eligible entity is classified as a partnership if it has two or more members. Regulations Section 301.7701-3(b).

The Fund will be formed under the Delaware Limited Liability Company Act (the “**LLC Act**“). As a consequence, the Fund will not be referred to as incorporated, or as a corporation or a body corporate and should, therefore, be an eligible entity within the meaning of the Regulations. Since the Fund will have more than one member, and will not elect otherwise, the Fund would be classified as a partnership for federal income tax purposes, and the Investors would be treated as partners for such purpose.

A partnership may also be treated as a corporation for federal income tax purposes if it is “a publicly traded partnership” within the meaning of Section 7704 of the Code. Section 7704 defines a publicly traded partnership as a partnership, the interests in which are (i) traded on an established securities market or (ii) readily tradable on a secondary market or substantial equivalent thereof and the partnership’s income is not “passive type income,” such as real property, rents, interest and gain from the sale of real property. The Regulations provide that a partnership that meets certain safe harbor requirements are not readily tradable on a secondary market or substantial equivalent thereof. The Manager intends to operate the Fund so that it will meet the requirements for safe harbor treatment. Accordingly, the Fund should not be classified as a publicly traded partnership.

The remaining summary of federal income tax aspects assumes that the Fund would be classified as a partnership for federal income tax purposes, and the Investors of the Fund would be classified as partners in a partnership.

In addition, the Fund might form limited liability companies or other unincorporated entities (“**Acquisition LLCs**“) as acquisition vehicles. Under the Regulations, if the Fund is the sole

member of an Acquisition LLC, the existence of the Acquisition LLC as a separate entity from its member will be ignored for federal income tax purposes unless the Acquisition LLC affirmatively elects to be taxable as a corporation for federal income tax purposes. The Manager generally intends that any Acquisition LLC in which it is the sole member will be disregarded as a separate entity from the Fund for federal income tax purposes.

***Taxation of Investors.*** Under the Code, an organization that is classified as a partnership does not itself pay any federal income tax. Rather, an allocable share of the income, gains, losses, deductions and credits of a partnership is passed through to the partners, each of whom must report such items on its separate federal income tax return without regard to whether any actual cash distribution is made to the partner during the taxable year. Thus, a partner’s taxable income from the partnership and even the resulting tax liability may exceed the cash distributed to such partner in a particular taxable year.

The characterization of an item of profit or loss (i.e., as capital gain or ordinary income) will usually be determined at the partnership level. Given the nature of the Fund’s anticipated business, much of the net taxable income arising from the Fund’s operations and investments that are allocated to an Investor will likely be considered ordinary income and not capital gains. Net taxable income arising from the sale of assets other than those held for sale in the ordinary course of business, however, should be considered a capital gain. For development projects qualifying for capital gains treatment, the holding period for determining whether the gain will be treated as long term or short term will not commence until construction is complete, and the project is placed in service, meaning generally, that it is available for occupancy by tenants. Except as limited by the “at risk” and “passive loss” rules of the Code, discussed below, an Investor is entitled to deduct on its separate income tax return its allocable share of the Fund’s net losses, if any, to the extent of tax basis in its Interest at the end of the Fund’s taxable year in which such losses occur. See *Section X — Certain Tax and ERISA Matters — Basis in Investor’s Interest*. Income or loss of a partnership in which the Fund invests is passed through to the Fund as if the Fund directly owned the assets of the investment entity.

***Allocation of Partnership Items for Tax Purposes.*** Code Section 704(b) provides that the allocation of partnership items made pursuant to a partnership agreement will be respected if such allocations have substantial economic effect or are deemed to have substantial economic effect under an alternative test specified in the Regulations. In the absence of substantial economic effect, a partner’s distributive share of income, gain, loss, deduction or any item thereof will be determined in accordance with the partner’s interest in the partnership, taking into account all of the facts and circumstances. The Regulations interpreting Code Section 704(b) specify detailed alternative rules under which an allocation will be respected. An allocation contained in a partnership agreement will be valid if it satisfies the requirements of one of three tests: (1) it has “substantial economic effect”; (2) it is in accordance with the partners’ interests in the partnership; or (3) it is “deemed” to be in accordance with the partners’ interests in the partnership by meeting special rules contained in the Regulations. Regulations Section 1.704- 1(b)(1)(i).

An allocation satisfies the substantial economic effect test if it has economic effect under the

“capital account” analysis of the Regulations and that economic effect is substantial. In general,

an allocation lacks substantiality if it is likely to be offset by another allocation that would neutralize the economic effect of the first allocation.

The Regulations provide for an “economic effect” test and an “alternate test for economic effect.” Both sets of rules require that capital accounts be determined and maintained in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv) and that upon liquidation of the partnership (or a partner’s interest in the partnership), liquidating distributions are made in accordance with the positive capital account balances of the partners. To meet the “economic effect” test, the partners must agree to an unlimited deficit capital account restoration obligation upon liquidation of their interest in the partnership. However, under the “alternate test for economic effect,” the deficit makeup requirement is waived if the partnership agreement contains a “qualified income offset” provision and the allocation does not cause or increase a deficit balance in a partner’s specially adjusted capital account (in excess of any dollar amount that the partner is obligated to restore) as of the end of the partnership taxable year to which the allocation relates. Regulations Section 1.704-1(b)(2)(ii)(d).

No Investor will have an unlimited deficit capital account restoration obligation. The Fund will rely upon, and the Operating Agreement has been drafted to comply with, the “alternate test for economic effect” test of the Regulations.

The Code requires that a partner’s share of items of partnership income, gain, loss, deduction or credit correspond to the portion of the year in which he or she was an Investor of the partnership. Therefore, all income, gains, losses and deductions of the Fund will be allocated among the Investors based upon the date of their admission to the Fund, as determined in accordance with applicable Regulations.

***Cash Distributions.*** Cash distributions from the Fund will not necessarily be equivalent to the Fund’s net income as determined for federal income tax purposes or as determined under generally accepted accounting principles. If in any year the cash distributions to an Investor by the Fund exceed such Investor’s share of the Fund’s taxable income for that year, the excess will reduce such Investor’s tax basis in its Interest and will not be reportable as taxable income by the Investor for federal income tax purposes, to the extent of tax basis. Once an Investor’s tax basis in its Interest is reduced to zero, however, any further cash distributions to the Investor will generally be taxable as though it arose from a gain on the sale or exchange of the Interest. See *Section X — Certain Tax and ERISA Matters — Sale, Foreclosure or Liquidation of the Fund’s Property or Interests*.

A reduction in liabilities of the Fund will be treated as a cash distribution to each Investor to the

extent of such Investor’s allocable share of the liability.

***Basis in Investor’s Interests.*** The tax basis of an Investor’s Interest is equal to the Investor’s capital contributions (or the cost of the Interest, if acquired from a third party), reduced (but not below zero) by the Investor’s share of the Fund’s distributions and net losses and increased by the Investor’s share of the Fund’s net income. Basis is also increased by the Investor’s share of any of the Fund’s liabilities and is reduced by any decrease in the Investor’s share of any such liabilities. Under applicable regulations, an Investor’s share of the Fund’s liability is determined, in part, by the nature of the Fund’s debt (i.e., whether it is recourse or nonrecourse).

As an investor in any joint venture or partnership, the Fund would be allocated a share of any liabilities incurred by such joint venture or partnership. If such liabilities are nonrecourse, a portion may be allocable to the Fund and, therefore to its Investors.

***Limitations on Deduction of Losses.*** Although the Fund does not anticipate generating significant tax losses, in the event losses do occur, the Code contains various provisions which may restrict, limit or defer the deductibility of an Investor’s allocable share of Fund losses. The more important limitations are described below.

Subject to the other limitations discussed below, an Investor is entitled to deduct on the Investor’s personal income tax return an allocable share of the Fund’s net losses, if any, to the extent of the tax basis in the Investor’s Interest at the end of the taxable year in which such losses were realized. Any losses in excess of an Investor’s basis may carryover to subsequent taxable years and, subject to the other deduction limitations, an Investor may deduct such loss if and to the extent an Investor’s basis in its Interest is increased above zero.

Code Section 465 imposes a further limitation on the amount of net losses which may be claimed by an Investor who is an individual, an S corporation, or a “closely-held corporation” (defined as a corporation more than 50% of the shares of which are owned directly or indirectly by five or fewer individuals). For such taxpayers, the amount of losses that may be deducted as a result of the Fund’s activities is limited to the amount that such Investor is economically “at risk” at the close of the Fund’s taxable year. The amount at risk includes the taxpayer’s actual cash investment, plus any amount of the Fund’s debt if the taxpayer has personal liability for the debt or has pledged property (other than property used in the activity) as security and the Investor’s share of qualified nonrecourse financing. “Qualified nonrecourse financing” is non-convertible debt (for which no person is personally liable for repayment) that is: (i) secured by real property;

(ii) used in the activity of “holding” real property; and (iii) loaned or guaranteed by federal, state or local government or an instrumentality thereof, or is borrowed from a qualified person. A “qualified person” includes any person actively and regularly engaged in the business of lending money, other than a person from whom the taxpayer acquired the property or a person who receives a fee in connection with taxpayer’s investment in the property or a related person (unless the financing is commercially reasonable and on substantially the same terms as loans involving unrelated persons).

Losses in excess of the amount at risk must be deferred until years in which the Fund generates additional taxable income against which to offset such carryover losses or until additional capital is placed at risk. Previously taken losses must be recaptured, that is, recognized and taken into income, if the at risk amount is reduced below zero as, for example, through distributions, reduction of allocable indebtedness or deduction of net losses.

Code Section 470 limits, under certain circumstances, losses incurred by a partnership whose partners include tax-exempt organizations. Under this provision, to the extent deductions with respect to tax-exempt use property exceed the income generated from such property, the excess deductions are disallowed in that year, and carried forward to the subsequent year. Certain partnerships are excluded from Section 470, which was designed to curb certain abusive leasing transactions. The Fund does not anticipate that Section 470 would apply, but it is possible that a portion of any losses incurred by the Fund could be disallowed under this limitation.

***Passive Income and Loss Limitations.*** Section 469 of the Code limits the current deductibility of losses attributable to an activity in which the taxpayer does not materially participate or to a rental real estate activity by a taxpayer that is an individual, estate, trust, personal service corporation or a “closely held corporation.” Such losses are classified by the Code, and referred to herein, as passive losses.

Prior to the complete disposition of an activity or the taxpayer’s interest in the activity, passive losses may only be used to offset income derived from, or tax liability attributable to, passive activities. Thus, a taxpayer cannot usually offset passive losses against salary, active business income or portfolio income (such as dividends, interest and gains from securities sales). Any passive losses that cannot be deducted in a taxable year may be carried forward indefinitely and used to offset passive income in subsequent years. Suspended passive losses can be offset against active income to the extent they exceed the gain realized from the complete disposition of that passive activity.

The interest in the Fund of an Investor who is an individual, estate, trust or personal service corporation should constitute an interest in a passive activity due to their limited degree of participation in the activity. An Investor’s allocable share of income or loss from rental activities will be passive irrespective of such Investor’s participation unless such person is in the “real estate business” (as defined by Code Section 469). An Investor that is a “closely held corporation” (as defined in Code Section 469) can utilize any losses to offset its net active income, but not its portfolio income. Any interest expense attributable to a passive activity is not treated as investment interest. To the extent that any joint venture in which the Fund invests incurs debt in connection with its activities and a portion of the interest expense is allocable to the Fund, each Investor’s allocable share will be a component of such Investor’s net passive loss or income.

***Organizational and Syndication Expenses****.* The Fund’s organizational expenses are not currently deductible, but must be amortized ratably over a period of 15 years. An Investor’s allocable share of such organizational expenses will constitute a miscellaneous itemized deduction. The Fund’s syndication expenses (*e.g.*, expenditures made in connection with the marketing and issuance of the Interests) are neither deductible nor amortizable.

***Investment Interest Expense****.* Non-corporate Investors generally may deduct “investment interest expense” only to the extent of their “net investment income.” The investment interest expense of an Investor will generally include any interest expense accrued by the Fund and any interest paid or accrued on direct borrowings by the Investor to purchase or carry its Interest in the Fund. Net investment income generally includes gross income from property held for investment (including “portfolio income’) under the passive loss rules but not, absent an election, long-term capital gains or certain qualifying dividend income) less deductible expenses other than interest directly connected with the production of investment income.

***Sale, Foreclosure or Liquidation of the Fund’s Property or Interests.*** No market exists at present for the Interests and, because of certain restrictions on the transferability of the Interests, no market is expected to develop in the future. Nevertheless, if an Investor sells or otherwise disposes of its Interests, taxable gain or loss will be measured by the difference between the amount realized and the adjusted tax basis of the Interests disposed. See *Section X — Certain*

*Tax and ERISA Matters — Basis in Investor’s Interests*. The amount realized will also include a pro-rata share of any indebtedness owed by the Fund. In general, any gain recognized by an Investor on sale of an Interest would be capital gain, except to the extent of any “Section 751 Gain.” In general, “Section 751 Gain” would consist primarily of the depreciation recapture, appreciation in certain inventory items or unrealized receivables of the Fund. Ordinary income might be recognized even if a net loss is realized on the sale. The Fund does not anticipate that any Investor would have significant amounts of Section 751 Gain upon the disposition of an Interest except possibly with respect to certain amounts attributable to depreciation recapture, although no assurances can be made in that regard.

In addition, the Fund may realize gains or losses from dispositions of its investments. Generally, any gain which is realized on the sale of the Fund’s nondepreciable assets held for investment for more than one year generally would be treated, for federal income tax purposes, as long-term capital gain. A sale of depreciable assets used in a trade or business which are owned by the Fund or by a joint venture in which the Fund is a participant for more than one year would be a disposition of property used in a trade or business under Code Section 1231. Any such gain or loss would be allocated to the Investors as separately stated items to be combined with an Investor’s other items of Section 1231 gains and losses. If the combination of all gains and losses of a taxpayer from Section 1231 sales and exchanges results in a net loss, then such loss is characterized as an ordinary loss. Section 1231 gains in excess of depreciation recapture are taxed as long-term capital gains except to the extent a taxpayer has realized net losses from the sale of other Section 1231 assets during the five most recent taxable years.

If the Fund were at any time deemed for tax purposes to be a “dealer” in real property, any gain recognized upon a sale of such real property would be taxable as ordinary income, rather than as capital gain, and would constitute unrelated business taxable income to Investors who are tax- exempt entities. For this purpose, the term “dealer” means a person who holds real estate primarily for sale to customers in the ordinary course of business. The determination of whether property is held for sale to customers in the ordinary course of business is based on all the surrounding facts and circumstances. There is no assurance that the Fund will not be engaging in activities that could cause it to be treated as a dealer for federal income tax purposes.

Net long-term capital gains (i.e., capital gain derived from the sale of capital assets held for more than 1 year) of individual Investor are generally taxable at a reduced maximum rate of 20%. Notwithstanding the foregoing, the portion of an individual Investor’s long-term capital gain equal to such United States Investor’s distributive share of straight line depreciation previously claimed on the Fund’s depreciable real property is “unrecaptured section 1250 gain” that is subject to tax at a 25% rate. Ordinary income of individual Investors is generally taxable at graduated federal income tax rates up to a maximum 39.6% rate. In addition, non-corporate Investors may also be subject to an additional tax of 3.8% on ordinary income, depreciation recapture, unrecaptured Section 1250 gain, and long-term and short-term capital gains *See Section X – Certain Tax and ERISA Matters -- Additional 3.8% Tax on Net Investment Income.* Corporate Investors are generally taxed at graduated federal income tax up to a maximum 35% rate on both ordinary income and capital gains. The excess of capital losses over capital gains may be offset against the ordinary income of a non-corporate Investor, subject to an annual deduction limitation of $3,000. Unused capital losses may generally be carried forward indefinitely subject to an annual reduction based on the amount of capital losses allowed or

allowable as a deduction in the taxable year, but may not be carried back. For corporate Investors, capital losses may be offset only against capital gains, but unused capital losses may be carried back three years (subject to certain limitations) and carried forward five years.

The income tax consequences of a foreclosure by a lender to the Fund would be similar to those resulting from a voluntary disposition of Fund assets. However, since there would be no net cash proceeds available for distribution to the Investors in the event of a foreclosure, the Investors would not have any cash distribution available to satisfy tax liabilities arising from such transaction.

## IN GENERAL, UNLESS (1) THE AMOUNT REALIZED FROM SALE OF THE FUND’S ASSETS SUBSTANTIALLY EXCEEDS THE THEN UNPAID BALANCE OF THE FUND’S LIABILITIES, OR (2) THE AMOUNT REALIZED FROM A SALE OF AN INTEREST IN THE FUND SUBSTANTIALLY EXCEEDS THE SELLING INVESTOR’S ALLOCABLE SHARE OF THE FUND’S LIABILITIES, AN INVESTOR MAY HAVE TAXABLE INCOME, OR EVEN INCUR TAX, IN EXCESS OF THE AMOUNT OF THE CASH RECEIVED FROM SUCH SALE AND MAY FAIL TO RECOVER ANY CAPITAL INVESTMENT.

If the Fund receives a note as part of the consideration for the sale of the Fund’s assets, or the purchaser assumes or takes the property subject to any of the existing debt, there is no assurance that an Investor will be able to defer the tax on the gain until the cash proceeds are actually received. Under the installment sales rules, for the purpose of determining the amount of payment received in the year of sale, the excess of any debt assumed, or to which the Fund’s property is taken subject, over the Fund’s basis in the assets would be deemed a payment in the year of sale. Furthermore, sales of assets held for sale in the ordinary course of business do not qualify for installment sale treatment in any event.

Also, a taxpayer is required to recognize as income all depreciation recapture amounts in the year of sale, regardless of whether cash proceeds in that amount are received. This result could adversely affect an Investor upon the disposition of Fund assets if cash proceeds received in the year of sale are less than the recapture amount.

***Additional 3.8% Tax on Net Investment Income***. Investors who have taxable income over a certain threshold amount are subject to an additional 3.8% tax on all or a portion of their “net investment income”, which includes all or a portion of income and gain allocated to such Investors (whether from operations or the sale of one or more of the Fund’s assets), income and gain from the sale or other taxable disposition by an Investor of his, her or its Units, and income and gain from the liquidation of the Fund. Investors who are individuals (or an estate or trust) are urged to consult their own tax advisor regarding the application of the additional 3.8% tax in their particular tax situation.

***Guaranteed Payments****.* The Fund intends to report the Preferred Return amounts paid to the Investors as a “guaranteed payment for the use of capital” for income tax purposes. As such, the payment would be taxed to the Investors as ordinary income. Payment of guaranteed payments will generally reduce the taxable income of the Fund.

***Alternative Minimum Tax***. The losses and expenses, if any, allocated to the Investors and any tax preference items and adjustments generated in connection with their investment in the Fund may subject an Investor, depending on his, her or its other items of income, deduction, and tax preferences and adjustments, to the alternative minimum tax. Since the application of the alternative minimum tax to each Investor will vary depending upon an Investor’s personal tax situation in any year, each prospective Investor should consult with the Investor’s own personal tax advisor with the respect to the possible application of the alternative minimum tax and its consequences.

***Section 754 Election.*** Under Section 754 of the Code, the Fund may, in its discretion, elect to adjust the basis of the Fund property upon the transfer of an interest in the Fund by sale or exchange, upon the death of an Investor, or upon the distribution of property by the Fund to an Investor. The general effect of an election under Section 754 is that the transferee of the interest in the Fund is treated, for purposes of depreciation and determination of gain, as though it had acquired a direct interest in the Fund’s assets. The Fund is treated for such purpose, upon certain distributions to Investors, as though it had a newly acquired interest in the Fund’s assets and therefore acquired a new cost basis for such assets. Any such election, once made, may not be revoked without the consent of the Service. There are a number of complexities and added expense with respect to the tax accounting required to implement a Section 754 election. The failure to make a Section 754 election may have adverse tax effects upon a transferee of an interest in the Fund. Because such transferee’s pro rata share of basis in the Fund’s assets could be more or less than the transferee’s outside basis in its interest in the Fund, distortions in the timing and character of income can result. In addition, in certain cases, if at the time an Interest in the Fund has been transferred, the Fund has a substantial built-in loss (i.e., its assets have depreciated in value by more than $250,000), then the Fund may be required to adjust the basis of property downward even if it has not made the basis adjustment election under Section 754.

***Termination of the Fund.*** Section 708 of the Code provides that if 50% or more of the interests in capital and profits in the Fund are sold or disposed of within a twelve month period, a termination of the Fund will occur for federal income tax purposes. In such event, the assets of the Fund would be treated as having first been contributed by the Fund to a new Fund in exchange for a 100% interest in the new Fund, followed by a liquidation of the Fund with a distribution of interests in the new Fund to each of the Investors of the Fund. A termination under Section 708 can result in the alteration of cost recovery periods for depreciable property. A Section 708 termination also requires the filing of a short-year return because the Fund’s tax year will close.

***Treatment of Liquidating Distributions.*** Upon liquidation of the Fund, an Investor will recognize gain to the extent that any liquidating distribution of cash exceeds such Investor’s adjusted basis in its interest in the Fund immediately before the distribution. Any gain realized will be a capital gain, except to the extent that such distribution is treated as a payment in exchange for such Investor’s interest in depreciation recapture, appreciation in certain inventory items or unrealized receivables of the Fund. To qualify as a long term capital gain, the liquidating distribution must be to an Investor that has held its interest in the Fund for at more than one year. See *Section X — Certain Tax and ERISA Matters — Sale, Foreclosure or Liquidation of the Fund’s Property or Interests*. A loss will be recognized only to the extent that the Investor’s basis exceeds a liquidating distribution solely of cash and would be classified as a

capital loss. Generally, the basis of an Investor in any property distributed in kind will be equal to the adjusted basis of his Interest reduced by any cash received in the distribution in liquidation of such Investor’s Interest, although non-cash distributions are not anticipated.

As noted above, a reduction in an Investor’s share of allocated liabilities of the Fund will be deemed a distribution of cash in such amount to the Investor. Thus, to the extent that an Investor’s share of any such indebtedness exceeds the adjusted basis for an Investor’s Interest (adjusted for any gain recognized on disposition of the Fund’s assets) upon liquidation of the Fund, an Investor will be deemed to have received a liquidating distribution of cash, and thus to have recognized gain in the amount by which the share of such indebtedness exceeds the Investor’s adjusted basis in its Interest. Any gain realized will be a capital gain, except to the extent that such deemed distribution is treated as a payment in exchange for such Investor’s interest in appreciated inventory items or unrealized receivables of the Fund. See *Section X — Certain Tax and ERISA Matters — Sale, Foreclosure or Liquidation of the Fund’s Property or Interests*. In addition, non-corporate Investors may also be subject to an additional tax of 3.8% on ordinary income, depreciation recapture, unrecaptured Section 1250 gain, and long-term and short-term capital gains *See Section X – Certain Tax and ERISA Matters -- Additional 3.8% Tax on Net Investment Income.*

***Fund Tax Returns and Elections.*** The Fund will file a tax information return on a calendar year basis. The Fund will furnish to the Investor federal income tax information, including each Investor’s allocable share of income, gains, losses, deductions, credits and items of tax preference to be reported on the Investor’s own federal income tax return.

With certain exceptions, the Fund will make any elections provided for in the Code that affect the computation of the Fund’s taxable income. These elections include the selection of a taxable year and the selection of a method of accounting. Under the Operating Agreement, the Manager has the exclusive right to make all such elections. The Manager intends to elect the calendar year as the taxable year of the Fund and to use the accrual method of accounting.

***Audit of Fund Items.*** Under the Code, the tax treatment of “Fund items” or “partnership items” will be determined at the Fund level in a unified Fund proceeding, rather than in separate proceedings with the various Investors. For this purpose, “Fund items” include: (1) the Fund’s aggregate and each Investor’s share of items of income, gain, loss, deduction or credit of the Fund; (2) non-deductible expenditures of the Fund; (3) tax preference items; (4) exempt income;

(5) Fund liabilities; (6) items necessary to compute investment tax credit, recapture, at risk amounts and guaranteed payments; and (7) optional adjustments under a Section 754 election. In addition, determinations at the Fund level of an amount, the character of an amount, or the percentage interest of an Investor may result in certain other items being treated as Fund items for such purposes. Proposed Regulations Section 1.623l(a)(3)-1.

Each Investor is required to treat Fund items on its separate return consistently with their treatment on the Fund’s information return. If an Investor intends to treat a Fund item in a manner inconsistent with the Fund return, a statement explaining the inconsistency must be filed with the Investor’s separate return.

The Manager will act as the tax matters member of the Fund and will likely control any unified Fund judicial proceeding. In such a proceeding, all Investors during the year at issue are treated as parties to such action, and generally the determination in such action will be binding on each Investor. Once a final judicial determination or settlement is made as to a Fund item, the income tax liability of each Investor will automatically be adjusted and any increase in tax, interest and penalty, if applicable, will be collected from the Investor, not the Fund.

The period for assessment with respect to Fund items for any Fund taxable year will expire three years from the date of filing of the Fund return or, if later, the due date of such return without any extensions. As to “Fund items,” this period may be extended for all Investors by agreement between the Manager and the Service.

***Risk of Audit.*** The Service may audit the Fund’s tax return. An audit of the Fund could result in the loss of some or a major portion of the tax benefits anticipated to be derived from an investment in the Fund. Any audit by the Service may lead to an audit of an Investor’s separate income tax return, which may lead to adjustments to items other than those relating to an investment in the Fund offered hereby. Additionally, the Fund could be dissolved and all of the Fund’s assets distributed before the Service commences an audit. In such event, no funds would be available to contest the audit unless the Investors elected to provide such monies.

***Penalties and Interest on Tax Deficiencies.*** An audit by the Service may lead to adjustments, in which event the Investor may be liable for additional federal income tax plus interest on any tax deficiencies. The interest chargeable on underpayments of tax is compounded daily. The rate of interest is adjusted quarterly to a percentage equal to the federal short-term rate for the first month in each calendar quarter (in general an average market yield on marketable obligations of the United States with a term of three years or less) plus three percentage points. Interest payable on federal income tax underpayments is not deductible by non-corporate taxpayers for federal income tax purposes. Penalties are also not deductible in computing income tax liability. The current accuracy-related penalty for an underpayment of income tax attributable to negligence or disregard of the rules and regulations (but not due to fraud), or to substantial understatement of income tax or substantial valuation misstatement, is 20% of the portion of the underpayment attributable to such negligence, disregard or substantial understatement, misstatement or overstatement. The current civil fraud penalty is equal to 75% of the portion of the underpayment attributable to fraud.

An accuracy-related penalty can be imposed any time there is a “substantial understatement of income tax,” which means an understatement that exceeds the greater of 10% of the tax required to be shown on the return for the taxable year or $5,000 in the case of individuals, S corporations and personal holding companies (or $10,000 for other corporations). This accuracy-related penalty may be avoided for non-”tax shelter” items if the treatment of the item is supported by “substantial authority” or if all the facts relevant to the tax treatment of the item are adequately disclosed on the return and there was a reasonable basis for such position. With respect to “tax shelter” items, the penalty may be avoided only if the taxpayer establishes that, in addition to having substantial authority for the position, there was a reasonable belief that the tax treatment claimed was “more likely than not the proper treatment.”

A tax shelter item is one that arises from a partnership or other entity, plan or arrangement, the principal purpose of which is the avoidance or evasion of federal income tax. The Manager does not believe that the principal purpose of the Fund would be found to be the avoidance or evasion of federal income tax, and thus the higher standard for avoidance of this penalty should not apply, to the extent that there may be any substantial understatement. Nothing contained in this Memorandum should be construed as a representation or guarantee of the Fund, the Manager, or any other party that there is substantial authority for any of the positions to be taken by the Fund.

***Changes in the Law.*** The laws and Regulations governing the federal income taxation of partnerships and partners and limited liability companies and Investors are constantly changing as a result of amendments to the Code, changes in Regulations, Service administrative policies and judicial decisions. Accordingly, no assurance can be given that presently existing tax authorities will not change in a way that would adversely affect the Fund and its Investors.

# *Unrelated Business Taxable Income*

***Tax Exempt Investors Other Than IRAs and Qualified Organizations.*** Tax exempt entities (other than Individual Retirement Accounts (“**IRAs**“) and Qualified Organizations, which are discussed separately below) are generally free of federal income tax on their investments. However, if an otherwise tax exempt entity generates income through a trade or business that is carried on by the tax exempt entity, whether directly or through a partnership, the income is generally subject to unrelated business income tax (“**UBIT**“). Income derived from a non- leveraged passive investment and that is in the form of dividends, interest, rent or capital gains is generally excepted from unrelated business taxable income (“**UBTI**“). Due to the expected nature of Fund investments and activities, it is likely that substantial amounts of non-passive income will be generated which could be characterized as UBTI. Furthermore, if a passive investment is acquired in whole or in part with debt financing, then the debt-financed income rules of Section 512(b)(4) of the Code will apply to make all or a portion of the investment income subject to UBIT. The debt-financed income rules apply whether the ownership interest in an entity is acquired in whole or in part with debt financing, or the entity in which the interest is acquired is a partnership for tax purposes and it acquires assets with debt financing. Thus, if a tax exempt entity acquires its Interest with debt financing, or the Fund acquires its assets with debt financing, the debt-financed income rules will apply to make all or part of the income derived by the tax exempt entity from its interest in the Fund UBTI subject to UBIT.

For each year, the percentage of the income that is subject to UBIT as a result of the debt- financed income rules will be a percentage that is the same as (A) the percentage that “average acquisition indebtedness” (defined in Section 514(c)(7) of the Code) for the relevant year is of

(B) the average adjusted basis in the property that generates the UBTI.

## AN INVESTMENT IN THE FUND BY A TAX EXEMPT INVESTOR (OTHER THAN AN IRA OR A QUALIFIED PLAN, WHICH ARE DISCUSSED SEPARATELY BELOW) IS LIKELY TO PRODUCE UBTI THAT WILL SUBJECT THE INVESTOR TO TAX ON A SUBSTANTIAL PORTION OF ITS ALLOCABLE EARNINGS FROM THE FUND. THE MANAGER WILL SEEK TO LIMIT THE AMOUNT OF UBTI BY SUCH INVESTORS TO THE EXTENT REASONABLY PRACTICABLE AND CONSISTENT WITH THE OBJECTIVE OF MAXIMIZING THE PRE-TAX RETURN OF ALL

**INVESTORS AND THE INTENT TO USE LEVERAGE TO ACQUIRE ASSETS. ANY POTENTIAL INVESTOR THAT IS A TAX EXEMPT INVESTOR SHOULD REVIEW CAREFULLY THE FOREGOING DISCUSSION AND CONSULT WITH ITS OWN TAX ADVISORS.**

***IRAs and Qualified Plans.*** Although earnings on investments by IRAs and qualified plans are generally tax-deferred until distributed, some types of investments may generate UBTI that is subject to UBIT in the year earned. Generally, UBTI is recognized when an otherwise tax exempt entity, or in the case of IRAs and qualified plans, an otherwise tax deferred trust, receives income that is generated by a trade or business that is regularly carried out by the exempt entity or trust. Income derived from a non-leveraged passive investment in an entity owning real property, including income in the form of dividends and interest, rents from real property, and capital gains from dispositions of the real property, are generally protected from UBIT. However, to the extent a passive investment in an entity that owns real property (or other assets), or in the real property itself, is acquired in whole or in part with debt financing, then the debt financed income rules of Sections 512(b)(4) of the Code may apply to make all or a portion of the income subject to UBIT. Thus, the income earned on an investment in the Fund by an IRA or Qualified Plan will give rise to UBIT since the Fund’s assets will be acquired, in part, with debt financing, unless the exception set forth in Section 514(e)(9) of the Code applies to protect the income.

Section 514(c)(9) of the Code protects from UBIT income from leveraged real estate investments by qualified plans, certain colleges and universities and related support organizations, and certain title-holding entities owned by those types of entities (“**Qualified Organizations**“). It is not clear that it applies to a leveraged acquisition of an ownership interest in a partnership or other entity that holds real estate. Since IRAs do not qualify under the Code as qualified plans, any income allocated to an IRA with respect to an investment in the Fund that is allowable to debt- financed assets of the Fund will be subject to UBIT. For each year, the percentage of the income that is subject to UBIT will be, as a result of the debt-financed rules, a percentage that is the same as (A) the percentage that “average acquisition indebtedness” (defined in Section 514(c)(7) of the Code) for the relevant year is of (B) the average adjusted basis in the property that generates the UBTI. Thus, prior to taking into account depreciation and other adjustments to basis, depending on the amount of leverage employed by the Fund, a significant portion of the taxable income derived from an investment in the Fund by an IRA will be subject to UBIT, and the IRA will be obligated to file tax returns for each year in which such income is allocated to the IRA by the Fund and will be obligated to pay the tax from IRA assets. The amount of the tax will not be credited to reduce taxes that are later payable on distributions to the beneficiary.

As noted, Section 514(c)(9) of the Code does protect Qualified Organizations from UBIT under complex special rules. These rules offer protection only if the following requirements are all satisfied: The purchase price is fixed at the time of purchase, debt service payments are not contingent on revenue or profits, the purchased property is not leased back to the seller or its affiliate, any seller financing meets certain criteria, and no sponsor or affiliate of a qualified plan that is an investor in the Fund is the seller. The Fund anticipates that it should meet each of these tests, but further provisions of the rules impose additional qualifications on the protection afforded to leveraged real estate investments by an entity such as the Fund (i.e., an entity treated as a partnership for tax purposes) which has both tax exempt and taxable investors as members.

Under these rules, the protection against UBIT will be afforded to a Qualified Organization investor only if the Fund’s allocations of items and profit and loss have “substantial economic effect” as defined in Section 704(b), and either (A) the Qualified Organization has the same allocation of items of profit and loss throughout the life of the Fund (i.e., the Fund’s allocations of items of profit and loss meet the requirements for “qualified allocations” as defined in Section 168(h) of the Code) or (B) the Fund’s allocations of items of profit and loss meet what is known under the Code as the “fractions rule” as defined in Section 514(c)(9)(E). The Fund believes that the allocations of items of profit and loss as set forth in the Fund’s organizational documents meet the alternate test for substantial economic effect, and thus that criteria is satisfied. See *Section X — Certain Tax and ERISA Matters — Allocation of Partnership Items for Tax Purposes*. The Fund believes that, subject to the following discussions and limitations, the Fund should also be able to meet the fractions rule.

Whether the Fund’s allocations of profit and loss meet the requirements of the “fractions rule” requires a multi-step, complex analysis of the interplay between the operation and effect of the Fund’s Operating Agreement and the Code. Stated in the simplest terms, the “fractions rule” provides that a Qualified Organization’s share of income from the Fund can never exceed its smallest projected percentage share of loss. The purpose of the rule is to prevent abusive situations in which tax exempt entities would be allocated excessive income that would escape tax and taxable entities would receive excessive loss allocations to shelter otherwise taxable income. In computing the Qualified Organization’s share of items of income and loss, the Code and the Regulations provide for the exclusion of a number of tax item categories in computing the amount of income or loss that is subjected to scrutiny. Among the most relevant are allocations of income as reasonable preferred returns to the investors and allocations of income to charge back or reverse prior allocations of loss to the Qualified Organization. The Fund has determined that, although the issue is not entirely free from doubt, the Fund’s allocation of items of income and loss should meet the requirements of the “fractions rule” and the income allocated to a Qualified Organization that invests in the Fund will not be subjected to UBIT. However, there can be no assurance that this is, or that it will continue to be, the case.

Certain types of investments may give rise to UBTI regardless of whether the requirements of the “fractions rule” have been met. If the Fund makes these investments or engages in other activities that generate UBTI, the UBTI generated thereby would subject the return on an investment in the Fund by a Qualified Organization to UBIT in the year that the UBTI is earned.

## AN INVESTMENT IN THE FUND BY A RETIREMENT PLAN THAT IS AN IRA WILL RESULT IN THE REALIZATION BY THE IRA OF UBTI THAT WILL BE SUBJECT TO TAX AT THE IRA LEVEL AND WILL NOT BE CREDITED AGAINST TAX DUE UPON DISTRIBUTIONS FROM THE IRA. ANY POTENTIAL INVESTOR CONSIDERING AN INVESTMENT THROUGH AN IRA SHOULD CONSULT WITH THE INVESTOR’S OWN TAX ADVISOR BEFORE MAKING AN INVESTMENT IN THE FUND.

**AN INVESTMENT IN THE FUND BY A QUALIFIED ORGANIZATION INVOLVES A RISK THAT THE INVESTMENT MAY GIVE RISE TO UBTI THAT WOULD SUBJECT THE QUALIFIED ORGANIZATION TO TAX ON A PORTION OF ITS ALLOCABLE EARNINGS FROM THE FUND. THE MANAGER WILL SEEK TO**

**LIMIT THE AMOUNT OF UBTI REALIZED BY A TAX-EXEMPT INVESTOR TO THE EXTENT REASONABLY PRACTICABLE AND CONSISTENT WITH ITS OBJECTIVE OF MAXIMIZING THE PRE-TAX RETURN OF ALL INVESTORS. ANY POTENTIAL INVESTOR THAT IS A QUALIFIED ORGANIZATION SHOULD REVIEW CAREFULLY THE FOREGOING DISCUSSION AND CONSULT WITH ITS OWN TAX ADVISORS.**

***Private Foundations.*** In some instances, an investment in the Fund by a private foundation could be subject to an excise tax to the extent that such investment constitutes an “excess business holding” within the meaning of the Code. For example, if a private foundation (either directly or after taking into account the holdings of its disqualified persons) acquires more than 20% of the profits interest of the Fund (or 35%, if the private foundation does not, directly or indirectly, “control” the Fund), the private foundation may be considered to have an excess business holding unless at least 95% of the Fund’s gross income is from passive sources within the meaning of Section 4943(d)(3)(B) of the Code and the private foundation does not own, through the Fund, an excess amount of the voting stock or equivalent in any business enterprise owned by the Fund. Private foundations should consult their own tax advisors regarding the excess business holdings provisions and all other aspects of Chapter 42 of the Code relating to an investment in the Fund.

# *Real Estate Investment Trusts*

The Fund may make a portion of its investments through one or more real estate investment trusts (each a “**REIT**“). In light of that and the complexity of the REIT rules, certain aspects of such rules are discussed below.

***Taxation of a REIT.*** Under the Code, a REIT itself is generally not subject to tax to the extent that it distributes its income to its shareholders. To qualify as a REIT, a company must meet a number of technical United States federal income tax requirements, including requirements relating to ownership of shares, nature and diversification of assets, sources of income and distributions. The Fund anticipates that each REIT through which it invests will satisfy such requirements. In summary form, these technical requirements as they would apply to the Fund include the following: (i) a REIT must have at least 100 beneficial owners; (ii) shares in the REIT must be transferable; (iii) there must be no group of five or fewer individuals (as defined in the Code to include certain entities) holding in the aggregate, directly or through the Fund, more than 50% (by value) of the REIT; (iv) a REIT generally must distribute substantially all of its taxable income on a current basis; (v) at least 75% of a REIT’s gross income must be from real property, mortgages and certain related types of assets and at least 95% must be from those sources together with certain types of passive investment income; (vi) at least 75% of the value of a REIT’s total assets must be represented by real estate assets, cash and cash items and government securities; (vii) a REIT is subject to limits on its ability to receive rent or interest which is dependent upon income or profits or income from short-term investments; (viii) a REIT generally cannot directly receive any substantial income from managing properties or performing other services; and (ix) a REIT is subject to severe limits on its ability to develop properties for sale.

If an entity failed to qualify as a REIT and was not able to cure such failure under the applicable provisions of the Code, it would be subject to United States federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate rates, and it would not be permitted to deduct distributions to its shareholders. In addition, to the extent of current and accumulated earnings and profits, all distributions would be taxable as dividend income and, subject to certain limitations under the Code, corporate distributees could be eligible for the dividends-received deduction.

Assuming an entity through which the Fund invests qualifies as a REIT, in general, the REIT will not be subject to United States federal income tax on the portion of its ordinary income and capital gain that is distributed to shareholders. The REIT would be subject to tax at corporate rates on any net ordinary income or capital gain not so distributed. The REIT would also be subject to a tax equal to 100% of net income from any prohibited transaction and to alternative minimum tax liability (which could arise if it has significant items of tax preference). A “prohibited transaction” includes a sale of dealer property (such as condominiums) with certain exceptions.

A REIT will be subject to a 4% non-deductible excise tax for each calendar year on the excess of its “required distribution” for such calendar year over its “distributed amount” for such calendar year. The “required distribution” is the sum of 85% of the REIT’s ordinary income for such calendar year, plus 95% of its capital gain net income for the year with certain adjustments. The “distributed amount” is the deduction for dividends paid, plus the amount of a REIT’s taxable income or capital gains subject to corporate level tax for the calendar year, with certain adjustments. The Fund intends that each REIT established by the Fund will generally make sufficient distributions each year to avoid liability for the 4% excise tax. It is possible that a REIT may on occasion declare a dividend in one year and not receive the cash to pay such dividend until some point during the following year. In such a case, a REIT may incur borrowings to pay the distribution by a date that allows it to avoid the excise tax.

***Taxation of REIT Shareholders.*** Each of the Investors will be allocated a portion of the income that the Fund realizes with respect to its ownership of REIT shares. Each Investor will generally be taxed with respect to this allocated income in the same manner as if such Investor held the REIT shares directly. Distributions made by a REIT to its taxable shareholders out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be taken into account by them as ordinary income and will not be eligible for the dividends-received deduction for corporations. Distributions that a REIT designates as capital gain dividends will be taxed as long-term capital gains (to the extent they do not exceed the REIT’s actual net capital gain for the taxable year) without regard to the period for which the shareholder has held its stock. However, corporate shareholders may be required to treat up to 20% of certain capital gain dividends as ordinary income. Distributions in excess of current and accumulated earnings and profits will generally not be taxable to a shareholder to the extent that they do not exceed the shareholder’s adjusted basis in its shares, but rather will reduce such adjusted basis. To the extent that such distributions exceed the adjusted basis of a shareholder’s shares they will be included in income as long-term capital gain (or short-term capital gain if the shares have been held for one year or less), assuming the shares are a capital asset in the hands of the shareholder. Any consent dividends deemed paid by a REIT will be taxable as ordinary income to the shareholders to the extent of earnings and profits, even though no cash will be distributed by the

REIT. Shareholders may not include in their income tax returns any net operating losses or capital losses of a REIT.

A shareholder’s gain on the sale of its shares in a REIT will be taxed at long-term or short-term capital gain rates, depending on how long the shares were held, and assuming the shares were a capital asset in the hands of the shareholder. However, in general, any loss upon a sale or exchange of shares by a shareholder that has held such shares for six months or less (after applying certain holding period rules) will be treated as a long-term capital loss to the extent of previous distributions from a REIT to the shareholder that were required to be treated by such shareholder as long-term capital gain.

***Taxation of Tax-Exempt REIT Shareholders.*** Income from a business conducted through a REIT generally is not treated as UBTI to the holder of shares in the REIT, assuming the shares are not debt-financed or used in an unrelated business of such holder. Similarly, except as described below, distributions by a REIT to a shareholder that is a tax-exempt entity generally will not constitute UBTI based on such assumptions. In general, borrowings by a REIT itself will not cause a partnership owning shares in such REIT to be considered to have acquisition indebtedness for UBTI purposes. However, if the Fund guarantees any such financing by a REIT, the Service could assert that the financing represents acquisition indebtedness of the Fund. That in turn could cause tax-exempt investors to recognize UBTI with respect to the Fund’s investments in the REIT. The Fund does not intend to guarantee any financing by a REIT subsidiary.

Notwithstanding the foregoing, a pension trust qualified under Section 401(a) of the Code (a “qualified trust”) that owns more than 10% of a REIT’s shares is required to recognize any UBTI from REIT distributions if the REIT is considered to be “pension-held.” A “pension-held REIT” is a REIT that is more than 50% owned by a group of five or fewer individuals and qualified trusts if either: (i) at least one qualified trust owns more than 25% of the REIT or (ii) a group of qualified trusts, each separately holding more than 10% of the REIT, collectively own more than 50% of the REIT.

If a REIT is pension-held, it must determine the extent to which its dividends would constitute UBTI for its more than 10% qualified trust shareholders. For this purpose, the activities of the REIT are tested for UBTI as if it were a qualified trust. Qualified trusts are not required to report UBTI with respect to REIT dividends if the REIT’s gross income that would be deemed UBTI (less direct expenses) constitutes less than 50% of its gross income (less direct expenses). Thus, if the REIT would not have generated UBTI at least equal to 5% of its income if it were a qualified trust, then no qualified trust holding shares in the REIT will have UBTI with respect to the REIT’s dividends. Conversely, if the REIT would have recognized UBTI at least equal to 5% of its income if it were a qualified trust, then any qualified trust that owns more than 10% of a pension-held REIT will recognize UBTI on the REIT’s dividends in the same proportion as the REIT’s deemed gross UBTI (less direct expenses) bears to its total gross income (less direct expenses).

The Fund cannot make any assurances that a REIT in which the Fund invests will not be a

“pension-held REIT” as described above.

# *Non-United States Investors*

The discussion below is applicable solely to Non-United States Investors investing directly in the Fund. A “Non-United States Investor“ is an Investor that is not a United States Person. A “United States Person“ is an individual who is a citizen or a resident of the United States for United States federal income tax purposes; a corporation that is organized in or under the laws of the United States or any political subdivision thereof; an estate, the income of which is subject to United States federal income taxation regardless of its source; or a trust (i) that is subject to the supervision of a court within the United States and the control of a United States Person as described in Section 7701(a)(30) of the Code or (ii) that has a valid election in effect under applicable Regulations to be treated as a United States Person.

***Effectively Connected Income.*** Some or all of the investments made by the Fund may constitute a United States trade or business. In general, Non-United States Investors in a limited liability company that is treated as a partnership for federal income tax purposes and that is “engaged in a trade or business in the United States” within the meaning of the Code are themselves considered to be engaged in a trade or business in the United States. Thus, Non-United States Investors that invest in the Fund directly or through a pass-through entity should be aware that the Fund’s income and gain from (as well as gain from the sale of Interests in the Fund attributable to) United States investments may be treated as effectively connected with the conduct of a United States trade or business and thus be subject to tax (at the federal and possibly state and local levels) at regular United States rates even though such investor has no other contacts with the United States. The Fund will generally withhold federal income tax from a Non-United States Investor’s allocable share of any taxable income of the Fund that is effectively connected with a United States trade or business (whether or not such income is distributed) at the maximum applicable federal income tax rate then in effect. Notwithstanding that some or all of such taxes may be collected by withholding, Non-United States Investors may be required to file appropriate federal (and possibly state and local) tax returns. Withholding tax may be claimed as a credit against a Non-United States Investor’s United States federal income tax liability.

Prospective investors that are foreign corporations should also be aware that the 30% United States “branch-profits tax” and “branch-level interest tax” may apply to an investment in the Fund by a foreign corporate Investor although the rate at which such taxes apply may be reduced or such taxes may be eliminated entirely for residents of certain countries with tax treaties with the United States. Non-United States Investors who wish to claim the benefit of an applicable income tax treaty may be required to satisfy certain certification requirements. In general, different rules could apply in the case of Non-United States Investors subject to special treatment under United States federal income tax law, including a non-United States person (i) who has an office or fixed place of business in the United States or is otherwise carrying on a U.S. trade or business; (ii) who is an individual present in the United States for 183 or more days or has a “tax home” in the United States for U.S. federal income tax purposes; or (iii) who is a former citizen or resident of the United States. Non-United States Investors who are individuals generally will be subject to U.S. federal estate tax on the value of U.S.-situs property owned at the time of their death. It is unclear whether partnership interests (such as the interests in the Fund) will be considered U.S.-situs property. Accordingly, Non-United States Investors may be subject to

U.S. federal estate tax on all or part of the value of the Fund interests held at the time of their death.

***Fixed or Determinable Annual or Periodic Income.*** If the Fund generates United States source income that is not effectively connected with a United States trade or business, Non-United States Investors will be generally subject to a withholding tax of 30% (unless reduced by an applicable treaty) on all “fixed or determinable annual or periodical gains, profits and income” (as defined in the Code and including, but not limited to, interest and dividends) and certain other gains and original issue discount, which are included in the Non-United States Investors’ distributive share of company income (whether or not distributed).

***FIRPTA.*** Regardless of whether the Fund’s activities constitute a trade or business giving rise to United States “effectively connected” income, under provisions added to the Code by the Foreign Investment in Real Property Tax Act of 1980 (“**FIRPTA**“), Non-United States Investors are taxed on the gain derived from the dispositions of United States real property (including gain allocated pursuant to the Operating Agreement upon a sale of assets by the Fund) and certain interests in entities owning such property. Under FIRPTA, Non-United States Investors treat gain or loss from dispositions of United States real property as if the gain or loss were “effectively connected” with a United States trade or business and therefore are required to pay United States taxes at regular United States rates on such gain or loss. Generally, the Fund will be required under Section 1445 of the Code to withhold an amount equal to 35% of the gain attributable to the United States real property interest realized on the sale of the Fund’s property to the extent such gain is allocated to Non-United States Investors. Also, such gain may be subject to a 30% branch profits tax in the hands of a Non-United States Investor that is a corporation (as discussed above).

***Real Estate Investment Trusts.*** As previously discussed under *Real Estate Investment Trusts*, the Fund may invest through one or more REITs, which REITs should qualify as a “domestically-controlled” REIT for purposes of FIRPTA (i.e., less than 50 percent in value of the stock of the REIT will be held directly or indirectly by foreign persons during the relevant testing period). Each of the Investors in the Fund will be allocated a portion of the income that the Fund realizes with respect to its ownership of REIT shares. Each Non-United States Investor will generally be taxed with respect to this allocated income in the same manner as if such Non- United States Investor held the REIT shares directly. Accordingly, dividends from the REIT that are not attributable to gains from the sale of United States real property interests would be subject to United States withholding tax at a 30% rate (as reduced by applicable treaty). Dividends that are attributable to gains from the sale of United States real property interests would be subject to withholding tax at the maximum applicable United States federal income tax rate. For these purposes, dividends paid are first considered attributable to gains from the sale of United States real property interests, if any. Gains on the sale of the REIT stock, however, would not be subject to United States federal income tax, so long as the REIT was “domestically controlled.”

Foreign persons or entities considering investing in the Fund should consult their own tax advisors with respect to the specific tax consequences to such person or entity of such an investment under United States federal, state and local income tax laws.

# *Foreign, State and Local Taxes*

In addition to federal income taxes, Investors may be subject to other taxes, such as foreign, state or local income taxes, and estate, inheritance or intangible property taxes which may be imposed by various jurisdictions. Potential investors, therefore, should consider the potential foreign, state and local tax consequences of holding an Interest. Deductions or credits that are available for federal income tax purposes may not be available for foreign, state or local income tax purposes. Furthermore, the treatment of particular items under foreign, state and local tax laws may vary materially from the federal income tax treatment discussed above. **Each Investor should consult its own tax advisor as to the foreign, state and local tax consequences to it of an investment in the Fund.**

# *Mezzanine Investments*

In general, interest income earned by the Fund on a mezzanine investment made by the Fund will be treated as ordinary income to the Investors. However, while the issue is not entirely free from doubt, the Fund believes that certain equity interests acquired in connection with mezzanine investments should qualify as capital assets (provided that such equity interests are purely profit interests rather than capital interests, and are fully earned as additional consideration for making the mezzanine investment and will survive the repayment thereof), such that upon the sale of the property owned by the borrower, payments to the Fund in consideration of its equity interests would be treated as gain recognized on the sale of the real property securing such mezzanine investment and thus income arising therefrom should be treated as capital gains.

***Backup Withholding.*** Backup withholding of United States federal income tax may apply to distributions (or some portion thereof) made by the Fund to Investors who fail to provide the Fund with certain identifying information (such as the Investor’s tax identification number). United States Persons may comply with these identification procedures by providing the Fund a duly completed and executed IRS Form W-9 (Request for Taxpayer Identification Number and Certification). Non-United States Investors may comply with these identification procedures by providing the Fund with the relevant IRS Form W-8, duly completed and executed.

## THE FOREGOING ANALYSIS IS NOT INTENDED AS A SUBSTITUTE FOR CAREFUL TAX PLANNING, PARTICULARLY SINCE THE INCOME TAX CONSEQUENCES OF AN INVESTMENT IN A LIMITED LIABILITY COMPANY ARE COMPLEX, AND CERTAIN OF THESE CONSEQUENCES, INCLUDING THE IMPLICATIONS OF RECENT AND POSSIBLE FUTURE LEGISLATIVE TAX CHANGES, WILL NOT BE THE SAME FOR ALL TAXPAYERS. ACCORDINGLY, AN INVESTOR IS EXPECTED AND ENCOURAGED TO CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO ITS INVESTMENT IN THE FUND.

***Certain ERISA Considerations***

The U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**“), imposes certain requirements on “employee benefit plans” (as defined in Section 3(3) of ERISA) that are subject to Title I of ERISA, as well as certain entities such as collective investment funds and insurance company separate accounts whose underlying assets include the assets of such plans

(collectively, “**ERISA Plans**”) and on those persons who are fiduciaries with respect to ERISA Plans. ERISA Plans are also subject to the prohibited transaction rules of Section 406 of ERISA and Section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”), that should be considered before investing in the Fund.

While not subject to Title 1 of ERISA, including Section 406, plans covering only self-employed individuals (“**Self-employed Plans**”) and individual retirement accounts and IRAs are subject to the prohibited transaction rules of Section 4975 of the Code that need to be considered before investing in the Fund.

These rules under ERISA and the Code are generally not applicable to government plans, church plans or plans covering employees outside the United States (collectively, “**non-ERISA Plans**”). Consequently, much of the following discussion of the fiduciary issues arising under ERISA is generally not applicable to such investors. Non-ERISA Plan investors may, however, be subject to various other fiduciary requirements under state or other applicable law, which such investors should consider before investing in the Fund.

## General Fiduciary Considerations

Investments by ERISA Plans are subject to ERISA’s general fiduciary requirements, including the requirements of investment prudence and diversification and the requirements that ERISA fiduciaries act solely in the interests of the ERISA Plan’s participants and beneficiaries and to act consistent with the documents governing the ERISA Plan. The prudence of a particular investment must be determined by the responsible fiduciary of an ERISA Plan by taking into account the ERISA Plan’s particular circumstances and all of the facts and circumstances of the investment including, but not limited to, the matters discussed above.

Each such fiduciary should determine whether, under the general fiduciary standards of investment prudence and diversification and under the documents and instruments governing the ERISA Plan, an investment in the Plan is appropriate for the Plan, taking into account the overall investment policy of the Plan and the composition of the Plan’s investment portfolio.

Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan and certain persons (referred to as “parties in interest” under ERISA or “disqualified persons” under the Code) having certain relationships to such Plans, unless a statutory or administrative exemption is applicable to the transaction. The prohibitions in Section 4975 of the Code also apply to certain transactions involving the assets of a Self- employed Plan and disqualified persons with respect to such plans. A plan fiduciary who causes an ERISA Plan or a Self-employed Plan to engage in, as well as a party in interest or disqualified person who engages in, a prohibited transaction with respect to an ERISA Plan or a Self- employed Plan may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. With respect to an IRA that invests in the Fund, the occurrence of a prohibited transaction involving the individual who established the IRA, or his or her beneficiaries, could cause the IRA to lose its tax-exempt status.

The Manager or other entities involved in this offering of Interests in the Fund, or their

respective affiliates, may be a fiduciary, a “party in interest” or a “disqualified person” with

respect to Plans that purchase, or whose assets are used to purchase, Interests in the Fund. Absent an available prohibited transaction exemption, the fiduciaries of a Plan should not purchase Interests with the assets of any Plan if the Manager or any affiliate thereof is a fiduciary with respect to such assets of the Plan unless such fiduciaries of such plan have otherwise concluded that no prohibited transactions would arise. Plan fiduciaries should consult their own legal advisors as to whether such purchases could result in liability under ERISA or the Code.

The fiduciary of an ERISA Plan or Self-employed Plan that proposes to invest in the Fund should consider whether such investment may involve a prohibited transaction between such Plan and such a party in interest or disqualified person with respect to such Plan.

Depending on the identity of the Plan fiduciary making the decision to invest in the Fund on behalf of a Plan, Prohibited Transaction Class Exemption (“**PTCE**”) 96-23 (relating to investments directed by an in-house asset manager), PTCE 95-60 (relating to investments by an insurance company general account), PTCE 91-38 (relating to investments by a bank collective investment fund), PTCE 90-1 (relating to investments by an insurance company pooled separate account) or PTCE 84-14 (relating to transactions effected by a “qualified professional asset manager”) could provide an exemption from the prohibited transaction provisions of ERISA and Section 4975 of the Code. Other PTCEs or individual exemptions may be available with respect to an investment in the Fund. However, there can be no assurance that any of these class or individual exemptions will be available with respect to any particular transaction involving an investment in the Fund.

## Plan Asset Rules.

The U.S. Department of Labor has promulgated a regulation, 29 C.F.R. Section 2510.3-101 (the “**Plan Assets Regulation**“), describing when the assets of an entity in which an ERISA Plan invests are considered to be assets of the investing plan for purposes of certain provisions of ERISA, including the fiduciary responsibility and prohibited transaction provisions of Title I of ERISA and Section 4975 of the Code. Under the Plan Asset Regulation, as modified by section 3(42) of ERISA, if an ERISA Plan invests in an “equity interest” of an entity that is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act of 1940, the ERISA Plan’s assets include both the equity interest and an undivided interest in each of the entity’s underlying assets, unless the investment qualifies for certain exceptions under the Plan Asset Regulations. Similar look-through treatment can arise with respect to Self-employed Plans.

If the assets of the Issuer were deemed to constitute the assets of an ERISA Plan, the fiduciary authorizing the investment in the Fund on behalf of an ERISA Plan could be deemed to have delegated its asset management responsibility to the Manager, the Manager could be deemed a fiduciary with respect to the ERISA plan, and the assets of the Fund could be subject to ERISA’s reporting and disclosure requirements and fiduciary responsibility requirements. In addition, if the assets of the Issuer were deemed to constitute the assets of an ERISA Plan or Self-employed Plan, a transaction involving the assets of the Issuer could violate the prohibited transaction provisions of ERISA and Section 4975 of the Code unless a statutory or administrative exemption were applicable to the transaction.

An acquisition of an Interest in the Fund would be considered an equity investment in the Fund for purposes of the Plan Asset Regulations. In addition, Interests in the Fund will not be “publically offered securities” nor a securities issued by an investment company registered under the Investment Company Act of 1940. As a result, the assets of an ERISA Plan that makes an investment in the Fund will be deemed to include both the interest in the Fund and an undivided interest in assets of the Fund, unless the purchase qualifies for an exception under the Plan Asset Regulations. One such exception applies as long as equity participation by benefit plan investors is not “significant”. Equity participation by benefit plan investors is considered “significant” on any date, if immediately after the most recent acquisition of any class of equity interest in the entity, 25% or more of the value of such class is held be benefit plan investors. The term “benefit plan investor” is defined to include ERISA Plans, as well as plans that are subject to Section 4975 of the Code, including Self-employed Plans and IRAs.

The Manager intends to use good faith efforts to limit ownership of the Interests in the Fund by benefit plan investors to less than 25%. Each investor in the Fund will be required to represent and warrant whether or not it is a benefit plan investor, and, if so, the percentage of its assets that constitute plan assets. The Manager will rely on such representations in seeking to maintain ownership of the Fund by benefit plan investors to less than 25%.

Any Plan fiduciary that proposes to cause an ERISA Plan, a Self-employed Plan, or an IRA to make an investment in the Fund should consult with its counsel regarding the applicability of the fiduciary responsibility and prohibited transaction provisions of ERISA and Section 4975 of the Code to such investment, and to confirm that such purchase will not constitute or result in a prohibited transaction or any other violation of an applicable requirement of ERISA or the Code. Any insurance company proposing to invest assets of its general account in Notes should consider the extent to which such investment would be subject to the requirements of ERISA in light of the U.S. Supreme Court’s decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust and Savings Bank* and under any subsequent legislation or other guidance that has or may become available relating to that decision, including the retroactive and prospective exemptive relief granted by the Department of Labor for transactions involving insurance company general accounts in PTCE 95-60 and the enactment of Section 401(c) of ERISA and regulations thereunder.

Non-ERISA Plans, while not subject to the fiduciary responsibility and prohibited transaction provisions of ERISA and section 4975 of the Code, may nevertheless be subject to state or other federal laws that are substantially similar to such provisions of ERISA or the Code. Any persons proposing to cause a non-ERISA Plan to make an investment in the Fund should consult its counsel regarding the compliance of such purchase with all applicable laws and the governing plan documents.

The foregoing discussion of ERISA and the Code is general in nature and is not intended to be complete. This discussion is based on an analysis of ERISA and the Code as currently in effect, existing laws, judicial decisions, administrative rulings and regulations, and proposed regulations, all of which are subject to change.

## IF THE ASSETS OF THE FUND WERE DETERMINED TO BE PLAN ASSETS, IN WHOLE OR IN PART, THERE COULD BE A NUMBER OF ADVERSE

**CONSEQUENCES UNDER ERISA AND THE CODE. EACH ERISA PLAN CONSIDERING INVESTING IN THE FUND SHOULD CONSULT WITH ITS ERISA ADVISOR REGARDING SUCH INVESTMENT, INCLUDING IN PARTICULAR THE APPLICATION OF THE PLAN ASSETS REGULATION WITH RESPECT TO THE FUND.**

1. **PLAN OF DISTRIBUTION**

The Fund has entered into an exclusive Engagement Agreement with the Placement Agent to assist in privately placing the Interests. The exclusivity period continues until the earlier of May 31, 2018 or such time as the Offering has been closed. The Interests will be offered on a “best efforts” basis, which means that there is no guarantee that any amount will be sold. Skyway Capital Markets, LLC (the “**Placement Agent**”) will engage sub-placement agents (the “**Selling Group**”) for this offering. The Placement Agent will receive a selling commission of 7% of the Gross Proceeds of this Offering, which it will re-allow to the Selling Group members. The Placement Agent will also receive a marketing re-allowance fee of 1% which it will re-allow to the Selling Group members. The Placement Agent will also receive a fee for serving as managing broker-dealer in the amount of 3.5% of the Gross Proceeds of this offering. The Placement Agent, as managing broker-dealer of this Offering, will be responsible for all “wholesaling fees” related to the Selling Group. The Placement Agent will be reimbursed for its reasonable, out of pocket expenses related to its services, as well as its reasonable, out of pocket legal fees and expenses related to its engagement. In addition to the commissions paid at the time of each closing, Selling Group members will be entitled to receive a percentage of the Manager’s Incentive Distributions.

The Placement Agent and its officers, employees and affiliates may purchase Interests in the Offering. The Placement Agent and the Fund may, in their sole discretion, accept subscriptions to purchase Interests net (or partially net) of commissions described in the Memorandum in certain circumstances deemed appropriate by either one of them from Investors purchasing through a Registered Investment Advisor (“**RIA**”) or from Investors who are affiliates of the Fund or any member of the Selling Group. The Fund may also make sales to registered reps of the Selling Group or to their spouses and affiliates, in each case net of sales commissions. We have agreed to indemnify the Placement Agent from and against losses, claims, damages or liabilities (collectively, the “**Damages**”) arising out of the Offering, except for Damages resulting from the Placement Agent’s breach of the Placement Agent Agreement, gross negligence or willful misconduct.

## HOW TO SUBSCRIBE

To subscribe for the Interests, prospective Investors will be required to complete, execute and deliver the Subscription Documents (including a signature page to the Operating Agreement and the Subscription Agreement) to the Manager’s transfer agent at the address listed in the Subscription Documents and deliver any supplemental information required thereby or in our discretion.

Prospective Investors also will be required to deliver simultaneously with the delivery of the Subscription Agreement, payment in full by check or wire transfer of their aggregate investment amount, payable to HomeBanc, N.A., as agent for Mill Green Opportunity Fund IV, LLC. All funds will be deposited into an escrow account pending the satisfaction of the conditions of the Offering. No subscription will be binding on us until accepted by us, in our sole discretion. Except as otherwise required by applicable law, subscriptions may not be withdrawn or canceled by subscribers.

The Fund and the Placement Agent may hold an initial closing of the Offering at any time. After the Initial Closing, the Fund may conduct closings at its discretion and immediately accept Subscription Agreements and the funds. We may hold any number of closings until we have accepted subscriptions for $40,000,000 (expandable in the Manager’s sole discretion). Promptly after acceptance and any closing, we will deliver to each investor whose subscription (or portion thereof) is then being accepted all required documents signed by us reflecting the number of Interests subscribed for and accepted by us.

The subscription items described above should be delivered to the Manager’s transfer agent at the address set forth in the applicable subscription documents.

## SECURITIES LAW MATTERS

***Offering Matters***. The Interests described herein are not registered under the Securities Act, in reliance upon the exemptions available under the Securities Act for transactions not involving any public offering, including Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated thereunder, and comparable state securities laws. Investors will be required to make certain representations to the Fund, including that they are “accredited investors” (as defined in Regulation D under the Securities Act) and are acquiring an interest in the Fund for their own account, for investment purposes only and not with a view to its distribution. These exemptions in part require that the holders of the Interests may not sell, transfer or otherwise dispose of any such securities without their registration under the Securities Act or the availability of an exemption from registration under the Securities Act and applicable state securities laws (in which case the holder may be required to provide a legal opinion, in form and substance and from counsel satisfactory to the Fund, that registration is not required).

There is no public market for the Interests, and the Company is not obligated to file a registration statement under the Securities Act to cover a public resale of the Interests and has no intention to do so. Potential Investors have not been and will not be granted the right to require the registration of their Interests in the Fund under either the Securities Act or any state securities acts. Accordingly, Investors may not be able to liquidate their investment in the Interests in the event of emergency or any other circumstances and they must be willing to bear the economic risks of holding an investment in the Interests for an indefinite period of time. See “RISK FACTORS.”

Even if an exemption from registration is available under the Securities Act and under the securities laws of all applicable states with respect to a desired disposition of an Investor’s Interests, such disposition will also be limited or prohibited by the terms of the Operating Agreement.

# *Investment Company Act of 1940*

As noted above, the Fund intends to conduct its activities so as not to be deemed an “investment company” required to register as such under the Investment Company Act. In this regard, the Fund will primarily invest in real estate, not securities, and intends to rely upon other exemptions under the Investment Act, including but not limited to, Section 3(c)(1) thereof and, therefore, will not be required to adhere to certain policies under that Act. The Investment Company Act will require the Fund to register with the SEC if there are more than 100 beneficial owners (as determined under the Investment Company Act). In order for the Fund to assure compliance with the terms of the Securities Act and to avoid the requirement to register under the Investment Company Act, all transfers of Interests must receive the prior consent of the Manager and no Investor that may be subject to the attribution rules under the Investment Company Act (e.g., a voluntary, contributory benefit plan) will be permitted, after the initial offering period of the Interests, to own, directly or indirectly, an interest of 10% or more.

# *Investment Advisers Act of 1940*

The Manager does not expect to register as an investment adviser under the Investment Advisers Act. If the Manager does so register, it may in its discretion seek the approval of the Investment Committee or the Investors in connection with approvals required under the Investment Advisers Act, including Section 206(3) thereunder, or otherwise. The approval of Investors may be sought from Investors having a majority of the aggregate capital commitments, or from those having a majority of the capital invested in a particular investment. Any such approval of the Investment Committee or the Investors will be binding upon the Fund and each Investor.

# *Non-United States Securities Law Matters*

Offers and sales of Interests will not be registered under the laws of any jurisdiction. Neither the securities commission of any non-United States jurisdiction nor any other agency has reviewed or passed upon the merits of this Offering.

# *Selling Restrictions*

## FOR PROSPECTIVE INVESTORS FROM FLORIDA

A PURCHASER (OTHER THAN AN INSTITUTIONAL INVESTOR DESCRIBED IN SECTION 517.061(7), FLA STAT.) WHO ACCEPTS AN OFFER TO PURCHASE SECURITIES EXEMPTED FROM REGISTRATION BY SECTION 517.061(11), FLA. STAT., MAY VOID SUCH PURCHASE WITHIN A PERIOD OF THREE (3) DAYS AFTER

(A) HE FIRST TENDERS CONSIDERATION TO THE ISSUER, ITS AGENT OR AN ESCROW AGENT OR (B) THE AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO THE PURCHASER, WHICHEVER LATER OCCURS, UNLESS SALES ARE MADE TO FEWER THAN FIVE (5) PURCHASERS IN FLORIDA (NOT COUNTING THOSE INSTITUTIONAL INVESTORS DESCRIBED IN SECTION 517.061(7)).

## MISCELLANEOUS

***Legal Matters***

Foley & Lardner LLP has acted as counsel to the Fund in connection with the Offering and other related matters, and will pass upon certain legal matters in connection with the offering of the Interests. Each potential investor is expected to consult its own counsel and/or tax advisors to review the specific tax and other consequences associated with the purchase of Interests.

# *Supplemental Sales Literature*

In addition to and apart from this Memorandum, the Fund may utilize certain sales materials in connection with the Offering, including an executive summary of certain of the material set forth in this Memorandum. This material may include fact sheets and Investor sales promotion brochures, question and answer booklets, and audio and/or video presentations.

Although the information contained in such material does not conflict with any of the information contained in this Memorandum, such material does not purport to be complete, and should not be considered as part of this Memorandum or as incorporated herein, or as forming the basis of the Offering of the Interests, which are offered hereby.

Other than as described herein, the Fund has not authorized the use of other sales material. The Offering is made only by means of this Memorandum.

This Memorandum includes web addresses for the Manager, PAC, New Market and certain of the Project Development Companies; however, the contents of those sites are not incorporated by reference in, or otherwise form a part of, this Memorandum.

# *Additional Information*

This Memorandum is intended to present a general outline of the policies and structure of the Fund and the Manager. The Operating Agreement and the subscription agreement, which specify the rights and obligations of the Investors, should be reviewed thoroughly by each prospective Investor. *Section VIII — Summary of the Offering and Material Fund Terms* contains a summary of certain provisions of the Operating Agreement and is qualified in its entirety by reference to the Operating Agreement. Copies of the subscription agreement will be made available upon request and should be reviewed prior to purchasing an Interest in the Fund. The Manager will be available to answer questions regarding the terms and conditions of this offering and to provide additional information that may be requested by prospective investors.

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## EXHIBIT A

**Operating Agreement of Mill Green Fund IV, LLC**

**MILL GREEN OPPORTUNITY FUND IV, LLC OPERATING AGREEMENT**

**Dated as of January 23, 2017**

THE MEMBERSHIP INTERESTS OF MILL GREEN OPPORTUNITY FUND IV, LLC HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), THE SECURITIES LAWS OF ANY STATE OR ANY OTHER APPLICABLE U.S. OR NON-U.S. SECURITIES LAWS, IN EACH CASE IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. THE MEMBER INTERESTS MAY BE ACQUIRED FOR INVESTMENT ONLY, AND NEITHER THE INTERESTS NOR ANY PART THEREOF MAY BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS OPERATING AGREEMENT; AND (III) THE TERMS AND CONDITIONS OF THE SUBSCRIPTION AGREEMENT AND THE INVESTMENT REPRESENTATIONS FOR THE MEMBER INTERESTS. THE MEMBER INTERESTS WILL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS, THIS OPERATING AGREEMENT AND THE SUBSCRIPTION AGREEMENT. THEREFORE, PURCHASERS OF THE MEMBER INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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## MILL GREEN OPPORTUNITY FUND IV, LLC OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (this “**Agreement**”) is made as of January 13, 2017, among the Manager and those additional Persons listed from time to time on the books and records of the Company as members of the Company (individually a “**Member**” and collectively, the “**Members**”).

## ARTICLE 1 DEFINED TERMS

**Section 1.1 Definitions**. The defined terms used in this Operating Agreement shall have the meanings specified below:

*Act* means the Delaware Limited Liability Company Act, Title 6, Subtitle II, Chapter 18, as amended from time to time (and any corresponding provisions of succeeding law).

*Additional Member* shall have the meaning set forth in Section 3.3(b).

*Adjusted Capital Account Deficit* shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account at the end of a period, increased by any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentences in Treas. Reg. §§ 1.704-2(g)(1) and 1.704-2(i)(5) and decreased by any items described in Treas. Reg. §§ 1.704-1(b)(2)(ii)(d) (4), (5) or (6).

*Affiliate* shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For the purposes of this definition, the terms “controls,” “is controlled by” and “under common control with” mean the possession of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

*Agreement* shall mean this Operating Agreement as it may be amended or restated from time to time.

*Asset Management Fee* shall mean the fee described in Section 5.9.

*Bankruptcy* shall mean with respect to any Member (a) the commencement of a case or other proceeding, without the application or consent of such Member, in any court, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Member, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Member or all or substantially all of its assets, or any similar action with respect to such Member under any law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, if such case or proceeding has continued undismissed, undischarged, unbonded or unstayed and in effect for a period of 120 consecutive days; or an order for relief in respect of such Member has been entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter

in effect; or (b) the commencement by such Member of a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect, or the consent by such Member to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for, such Member or the general assignment by such Member of all or substantially all of its property for the benefit of creditors, or such Member shall fail to, or admit in writing its inability to, pay its debts generally as they become due, or such Member or its board of directors shall vote to implement any of the foregoing; or (c) the commencement against the Member of any case, proceeding or other action seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets, which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 90 days from the entry thereof; or (d) the taking by the Member of any material action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (a), (b) or (c) above; or (e) the Member generally not paying, or being unable to pay, or admitting inability to pay, its debts as they become due.

*BBA* shall have the meaning set forth in Section 5.11(a).

*Capital Account* shall mean as to each Member, the account established and maintained as provided in Section 4.4 of this Agreement.

*Capital Contribution* in respect of any Member means the cash contributions made into the Company by such Member.

*Certificate of Formation* shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Delaware, as the same may be amended from time to time.

*Code* shall mean the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of succeeding law); any reference to any Section of the Code shall include any corresponding provision of succeeding law.

*Company* shall mean Mill Green Opportunity Fund IV, LLC, a Delaware limited liability company.

*ECI* shall have the meaning specified in Section 6.10.

*ERISA* shall mean the Employee Retirement Income Security Act of 1974, the related provisions of the Code, and the respective rules and regulations promulgated thereunder, in each case as amended from time to time by legislation or rule and as interpreted by judicial rulings.

*ERISA Member* shall have the meaning set forth in Section 8.2.

*Exempt Member* shall mean a Member which is exempt from federal income taxation under Section 501 of the Code.

*Final Closing* shall have the meaning set forth in Section 3.3(b).

*First Offer Period* shall have the meaning set forth in Section 10.2.

*Fiscal Year* shall mean the Company’s fiscal year as determined pursuant to Section 12.1.

*Foreign Person* shall mean any Person that is not a “United States Person” as that term is

defined in Section 7701 of the Code.

*Formation Costs* shall have the meaning set forth in Section 5.10(a).

*Gross Asset Value* shall mean, with respect to any asset, the asset’s adjusted basis for

federal income tax purposes, except as follows:

* 1. The Gross Asset Values of all Company assets may be adjusted to equal their respective gross fair values, as determined by the Manager, as of the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); the acquisition of an additional Interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; and the distribution by the Company to a Member of more than a de minimis amount of property as consideration for the Member’s Interest in the Company;
  2. The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair value of such asset, as determined by the Manager, on the date of distribution;
  3. The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (iii) to the extent that an adjustment pursuant to the foregoing clause (i) is made in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iii); and
  4. The Gross Asset Value of any asset contributed to the Company shall be its agreed-upon fair market value as of the date of contribution, adjusted for book depreciation, amortization, or other cost recovery deductions for periods subsequent to its contribution in the manner provided in the Regulations.

*Indemnified Party* shall have the meaning set forth in Section 5.7.

*Initial Closing* means the initial closing of the Company’s receipt of subscriptions as set

forth in Section 3.3(b).

*Initial Closing Date* shall have the meaning set forth in Section 4.1(a).

*Investment and Investments* shall have the respective meanings set forth in Section 2.3(a).

*Investment Contribution Amount* shall be $100,000 for each Investment Membership Unit, or a proportionate amount for less than a full Investment Membership Unit.

*Investment Entity* shall have the meaning set forth in Section 2.3(b).

*Investment Members* shall be the Members owning Investment Membership Units.

4.5(a).

*Investment Member’s Current Pay Account* shall have the meaning set forth in Section

*Investment Member’s Preferential Return Account* shall have the meaning set forth in Section 4.6(a).

*Investment Membership Units* shall mean the all of the Membership Interests other than the Management Membership Unit.

*Liquidation* shall mean (i) when used with reference to the Company, the earlier of (a) the date upon which the Company is terminated under Section 708(b)(1) of the Code or (b) the date upon which the Company ceases to be a going concern, and (ii) when used with reference to any Member, the earlier of (a) the date upon which there is a Liquidation of the Company or (b) the date upon which such Member’s entire interest in the Company is terminated other than by transfer, assignment or other disposition to a Person other than the Company.

*Manager* shall mean Mill Green Partners, LLC, a Delaware limited liability company.

*Management Member* shall be the Member owning the Management Membership Unit.

*Management Membership Unit* shall mean the Membership Interest issued to the Manager as contemplated by Section 3.2 hereof.

*Member and Members* shall have the meanings set forth in the preamble.

*Member Transferor* shall have the meaning set forth in Section 10.2.

*Membership Interests* shall mean the Members’ entire interest in the Company, including each Member’s right (based on whether such Membership Interest is an Investment Membership Unit or the Management Membership Unit), as applicable, to a share of Net Profits, Net Losses and distributions, and other rights and obligations pursuant to this Agreement, including approval, consent or voting rights, if any. Membership Interests shall consist of Investment Membership Units and the Management Membership Unit.

*Minimum Gain and Minimum Gain Chargeback* shall have the meaning contained in Section 1.704-2(f) of the Regulations.

*Net Capital Investment* shall have the meaning set forth in Section 4.7 hereof.

*Net Company Proceeds* shall mean all amounts received by the Company from the

operation, refinancing and disposition of the Company’s consolidated Investments (or portion

thereof) or otherwise, plus any cash that becomes available from Reserves, including but not limited to all proceeds, after debt service and accrued and near term expenses including Asset Management Fees (if any) and certain Operating Expenses, and after all amounts added to Reserves, from (i) current operating cash income received by the Company from the consolidated Investments and (ii) the disposition or refinancing of any particular Investment (including any proceeds from any Investments in which the Company received its Investment without making any capital contribution in respect thereof).

*Net Losses and Net Profits* means, for each fiscal year, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

* + 1. Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses shall be added to such taxable income or loss;
    2. Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits and Net Losses shall be subtracted from such taxable income or loss; and
    3. Any items which are specially allocated pursuant to Section 6.5 or

6.6 hereof shall not be taken into account in computing Net Profits or Net Losses.

*New Allocations* shall have the meaning set forth in Section 6.8(b).

*Offer* shall have the meaning set forth in Section 10.2.

*Offering Period* shall have the meaning set forth in Section 4.1(a).

*Operating Expenses* shall have the meaning set forth in Section 5.10(b).

*Overhead Expenses* shall mean salaries payable to the employees of the Manager; and the cost of rent, heat/air conditioning, light, utilities, telephone, office machines, secretarial assistance, furniture and fixtures, and like administrative overhead costs of the Manager.

*Paid-In Capital* shall mean the aggregate of the capital actually paid into the Company by each of the Members.

*Partnership Representative* shall have the meaning set forth in Section 5.11(a).

*Person* shall mean an individual or any entity, including but not limited to a corporation, company, judicial entity, voluntary association, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, trust, estate, unincorporated organization,

statutory body or a government or any agency, instrumentality, authority or political subdivision thereof.

*Project Development Companies* shall mean (i) Newport Development, LLC, (ii) Oxford Properties, LLC, (iii) Haven Campus Communities, LLC, (iv) 360 Residential, LLC, (v) Mulberry Development Group, LLC and (vi) any Affiliate of the foregoing, or any other development company that is developing a multifamily, student housing or grocery anchored retail project to which Preferred Apartment Communities, Inc. or an Affiliate thereof is providing a mezzanine loan and entering into a purchase option for the right to acquire the development project after stabilization.

*Regulations* shall mean the regulations promulgated pursuant to the Code.

*REIT* shall mean a real estate investment trust under Section 856 of the Code.

*Reserves* shall mean funds set aside and amounts allocated to reserves in amounts determined by the Manager for working capital, the payment of current pay return distributions to the Investment Members as provided in Section 6.2 of this Agreement, the payment of Asset Management Fees as provided in Section 5.9 of this Agreement, and the payment of taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company’s business.

*Subscription Agreements* means each subscription agreement executed by the Company

and each Member, relating to such Member’s investment in the Company.

*Tax Matters Partner* shall have the meaning set forth in Section 5.11(a).

*Term* shall have the meaning set forth in Section 2.4.

*UBTI* shall mean “unrelated business taxable income” as that term is defined in Sections

512 and 514 of the Code.

**Section 1.2 Headings; Captions**. The headings, titles and captions in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

## ARTICLE 2

**FORMATION OF COMPANY; NAME; PURPOSE; TERM AND DISSOLUTION**

**Section 2.1 Formation; Name**. The Manager formed a limited liability company on January 13, 2017 to be known as Mill Green Opportunity Fund IV, LLC pursuant to the provisions of the Act. The Company has also qualified to do business in the State of Georgia. The Company’s business may be conducted under any other name or names deemed advisable by the Manager, without the approval of any other Member.

**Section 2.2 Registered Office, and Registered Agents**. The registered office of the Company in the State of Delaware shall be at 2711 Centerville Road, Suite 400, Wilmington, Delaware, and the Company’s initial registered agent in the State of Delaware at such address

shall be Corporation Service Company. The registered office of the Company in Georgia shall be at 3284 Northside Parkway, Suite 320, Atlanta, Georgia 30327, and the Company’s initial registered agent in the State of Georgia at such address shall be Greg Fox. The registered offices and registered agents may be changed from time to time by the Manager without notice to the Members by filing the address of the new registered office or the name of the new registered agent, as the case may be, with the Secretary of State of Delaware or the Secretary of State of Georgia, as the case may be.

## Section 2.3 Business of the Company; Investment Objectives.

1. The business of the Company shall be to accomplish any lawful business whatsoever, including, without limitation, investing, directly or indirectly, in real estate projects developed by any of the Project Development Companies (collectively, “**Investments**” and, individually, an “**Investment**”). The Investments shall initially involve a Class A multifamily residential development in Ft. Myers, FL, subject to final due diligence and approval by the Manager. Additional multifamily, student housing and grocery anchored retail projects to be developed by any of the Project Development Companies may be added at the discretion of the Manager that meet the investment objectives of the Company.
2. Each of the Investments with the Project Development Companies may be made, directly and/or indirectly, through separate and distinct legal entities, which may include non-taxable entities such as partnerships or limited liability companies, REITs or other legal entities (collectively referred to as “**Investment Entities**”). Each of the Investment Entities will be managed by a Project Development Company. The Company may structure its Investments as securities and other business interests of any and all types and descriptions, whether listed on securities exchanges or not so listed, publicly or privately held, freely transferable or subject to restrictions on transfer, or domestic or foreign, including without limitation common and preferred stock, debentures, bonds, promissory notes, evidences of indebtedness, warrants, options and subscription rights of, and other participating interests in, Investment Entities, and puts, calls, options and other rights or obligations to purchase, sell or subscribe for any of the foregoing and, pending investment in any of the foregoing, short-term investments.
3. The Company’s investment objective is to produce attractive returns for the Members by initially investing in a Class A multifamily development project in Ft. Myers, FL, subject to final due diligence and approval by the Manager, and additional multifamily, student housing and grocery anchored retail projects to be developed by any of the Project Development Companies. The Company will seek value creation through the development, stabilization and disposition of these projects with a primary focus on capital appreciation.
4. The Company shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the furtherance of the purposes and business described herein for the protection and benefit of the Company, and shall have, without limitation, any and all of the powers that may be exercised on behalf of the Company by the Manager pursuant to Article 5.

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**(e)** Notwithstanding any other provision of this Agreement, the Company and the Manager, on behalf of the Company, may execute, deliver and perform the Subscription Agreements, any side letter and any documents contemplated thereby or related thereto and any amendments thereto, without any further act, vote or approval of any Person, including any Member.

**Section 2.4 Term and Dissolution**. The Company commenced on the date of the filing of the Articles of Organization and will continue until the Company is dissolved upon the occurrence of any of the following events (“**Term**”):

1. the failure of the Manager to initiate an Initial Closing on or before May 31, 2017; or
2. the sale or other disposition of all or substantially all of the Company’s

assets other than cash and marketable securities; or

1. the fourth anniversary after the Final Closing, provided that the Manager may, in its sole discretion, extend the term for up to two consecutive one-year periods. Additionally, subject to the approval of eighty percent (80%) of the Investment Members, the Manager may extend the term for an additional five-year period. For purposes hereof, “approval of eighty percent (80%) of the Investment Members” shall mean approval from Investment Members whose aggregate outstanding Investment Membership Units represent no less than eighty percent (80%) of the total aggregate Investment Membership Units of all those Investment Members who are eligible to vote.

**Section 2.5 Actions by Members**. Unless otherwise specified in this Agreement, any action required to be taken by the Members shall be deemed approved if approved by both the Management Member and Investment Members whose aggregate outstanding Investment Membership Units constitutes at least a majority of the total Investment Membership Units of the Company outstanding as of the date on which such approval is given.

## ARTICLE 3 MEMBERSHIP INTERESTS; MEMBERS

**Section 3.1 Membership Interests**. Ownership rights in the Company are divided into and represented by Membership Interests, which are comprised of (a) one Management Membership Unit and (b) up to 400 Investment Membership Units (which such amount may be increased by the Manager in its sole discretion without further action or approval of the Members).

**Section 3.2 The Management Member**. The Manager will own the entire Management Membership Unit. The Manager shall not contribute any capital to the Company in exchange for the Management Membership Unit.

**Section 3.3 The Investment Members**. The Investment Membership Units will be owned by the Investment Members listed as such on Exhibit A hereto. Each Investment Member shall, as a condition of receiving any Investment Membership Units, agrees to be bound by the

terms and provisions of this Agreement to the same extent and on the same terms as the other Investment Members.

1. **Formation; Admission**. An Investment Member shall be admitted to the Company if (i) such Investment Member shall have delivered to the Manager (x) an original completed and executed counterpart of the signature page to this Agreement, signed by such Investment Member, (y) an original completed and executed counterpart of the signature pages to the Subscription Agreement, signed by such Investment Member and (z) original completed and executed counterparts to such other related documentation as requested by the Manager, signed by such Investment Member; (ii) the Manager shall have confirmed the acceptance of such Investment Member’s deliveries;
2. the Manager shall have approved such Investment Member’s admission to the Company; and (iv) the Manager shall have acknowledged receipt from such Investment Member of the deposit of such Investment Member’s Capital Contribution with the Manager into an account designated by the Manager.
3. **Closings**. The initial issuance by the Company of Investment Membership Interests shall occur at the discretion of the Manager (the “**Initial Closing**”). The Manager shall have the right during the Offering Period to close with the Capital Contributions it has received, and thereafter to admit additional members (each, an “**Additional Member**”) to the Company at one or more subsequent closings subject to the provisions of Section 3.3(a) and Section 4.1(b) as applicable. The last closing pursuant to which subscribers are admitted to the Company as a Member is hereinafter referred to as the “**Final Closing**.” Manager shall amend Exhibit A attached hereto from time to time to reflect any Additional Members.
4. **Minimum Capital Contribution; Purchase Price for each Investment Membership Unit**. Each Investment Member purchasing Investment Membership Units from the Company shall make a $100,000 minimum Capital Contribution. The subscription price for each Investment Membership Unit (or a proportionate amount for less than a full Investment Membership Unit) shall be $100,000 per Investment Membership Unit.

**Section 3.4 Liability of Members**. Except as provided in Section 4.1 hereof, no Member shall be liable for any debts, liabilities, contracts, or obligations of the Company in excess of the amount of distributions made to such Member in violation of the Act. No Member shall be liable for any debts, liabilities, contracts, or obligations of any other Member. No Member, other than the Manager and Persons acting on its behalf, (a) will have any part in or interfere in any manner with the management or control of the Company, and (b) will have any authority or right to act on behalf of the membership or to bind the Company in connection with any matter, except as expressly provided in this Agreement. Except as provided in Section 11.2, no Member will have the right to vote for the election, removal or replacement of the Manager. The Members shall have no right to vote on Company matters other than (i) as required, versus permitted, by the Act or (ii) expressly granted in this Agreement.

**Section 3.5 Other Activities of Members**. Except as set forth below, no Member shall be required to refer investment opportunities to the Company, to account for any benefits from

transactions in any way connected with the Company or its business nor under any obligation to refrain from, or disclose, dealings between the Company (and/or its Affiliates) and such Member. The Manager may manage other realty funds and ventures (collectively, the “**Other Investment Funds**”). Any actions by the Manager in connection with duties as the manager of the Other Investment Funds and any of the Other Investment Funds’ potential participation in investments with the Fund, shall not constitute, to the fullest extent permitted by law, a breach of any duty of the Manager or its Affiliates to the Company or any Member. For avoidance of doubt, the Manager shall continue to manage the business and affairs of Mill Green Opportunity Fund, LLC, Mill Green Opportunity Fund II, LLC, Mill Green Opportunity Fund III, LLC and may manage one or more Other Investment Funds that are also other realty funds and ventures.

## ARTICLE 4 CAPITAL CONTRIBUTIONS

## Section 4.1 Initial Closing Date and Initial Capital Contributions; Multiple Closings.

1. **Initial Closing Date and Capital Contribution**. The offering period for the Investment Membership Units shall extend until February 28, 2018, provided that the Manager may extend the Offering Period in its sole and absolute discretion for an additional 90 days but no later than close of business on May 31, 2018 (the “**Offering Period**”). If the Manager does not initiate an Initial Closing, the Manager shall terminate the offering for the Investment Membership Units and shall return to the Investment Members their Capital Contributions. Investment Members shall be admitted to the Company at the Initial Closing, which shall occur during the Offering Period on such date as specified by the Manager in a notice to the Investment Members (the date of such Initial Closing being referred to as the “**Initial Closing Date**”). On or before the Initial Closing Date, each Investment Member that is subscribing for Investment Membership Units at the time of the Initial Closing shall (i) execute this Agreement, a Subscription Agreement and such other related documents as requested by the Manager and (ii) make the full amount of its Capital Contribution to the Company in cash or other immediately available funds, which may be used to pay for (A) Investments as approved by the Manager and meeting the requirements of this Agreement and (B) Formation Costs, distributions related to an Investment Member’s Current Pay Return Account, Asset Management Fees and Operating Expenses incurred and/or payable by the Company from time to time. In the event a potential Member subscribes for an interest in the Company and either (i) the Manager rejects such Member’s subscription (in whole or in part) for whatever reason or (ii) the Initial Closing does not occur within the terms set forth in Section 2.4 (a) herein, then such potential Member shall be entitled to receive a refund of any monies such Member deposited with the Company.
2. **Multiple Closings**. If at the Initial Closing the Investment Members’ total Capital Contributions are less than $40,000,000 as of the Initial Closing Date, then the Manager shall have the right during the Offering Period to terminate the offering for any additional Investment Membership Units or admit additional Investment Members to the Company at one or more subsequent closings. If the Manager admits Additional Members to the Company or accepts additional Capital Contributions from existing Members of the Company at one or more subsequent closings pursuant to Section 3.3(b),

each Additional Member will contribute to the Company the full amount of such Capital Contribution in cash or other immediately available funds. The Manager will have the ability to increase the amount of Capital Contributions the Fund will accept beyond

$40,000,000, solely at the Manager’s discretion.

**Section 4.2 Additional Capital Contributions**. No Member shall be required to contribute additional capital to the Company.

**Section 4.3 Return of Contributions**. Except as otherwise specifically provided in this Agreement, no Member shall have the right to demand or receive any part of his capital contribution and there is no right given to any Member to demand and receive property other than cash in return for the Member’s capital contribution.

**Section 4.4 Capital Account**. An individual Capital Account shall be maintained for each Member in accordance with Section 704(b) of the Code, paragraph 1.704-1(b)(2)(iv) of the accompanying Treasury Regulations, and the following rules:

1. **Computation of Capital Account Balance**. The Capital Account of a Member shall consist of the amount of money and the fair market value of any property (other than money) comprising the Paid-In Capital of the Member, as increased by: (i) any amount credited to the Capital Account of a Member pursuant to Section 6.4 hereof as a result of any Company income, profits or gains allocated to the Member (and as adjusted pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations), and (ii) the amount of any Company liabilities assumed by the Member or that are secured by any Company property distributed to that Member, and decreased by: (iii) the amount of money and the fair market value of any property (other than money) comprising any distributions to the Member pursuant to Articles 6 or 8 hereof, (iv) any amount debited to the Capital Account of a Member pursuant to Section 6.4 hereof as a result of any Company expenses, deductions, losses and credits allocated to the Member (and as adjusted pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations), and (v) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by that Member to the Company.
2. **Built-in Gain or Loss**. The Capital Account of a Member shall not be increased or decreased, as the case may be, with regard to any built-in gain or loss allocated to the Member pursuant to Section 6.4 hereof.
3. **Transferee’s Capital Account**. In the event of a transfer of any Membership Units, the transferee shall assume the Capital Account balance of the transferor.
4. **Interest**. No interest shall be paid on any present or future Capital Account balance.
5. **Conformance with Regulations**. The provisions of this Section 4.4 are intended to comply with Treasury Regulation Section 1.704-1(b) regarding the maintenance of the Capital Accounts of the Members and this Section 4.4 shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the

event that the Managing Member shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Treasury Regulations, the Managing Member may make such modifications, provided that it is not likely to have a material effect on any amounts distributable to any Member upon the dissolution of the Company. The Managing Member shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulation Section 1.704-1(b).

## Section 4.5 Current Pay Return.

* 1. **General.** A current pay return account (an **“Investment Member’s Current Pay Return Account”)** shall be maintained for each Investment Member and shall consist of an initial balance of zero (0) (i) increased at the end of each calendar month by an amount necessary to provide the Investment Member with a cumulative, but not compounded, six percent (6%) annual return on the Investment Member’s Net Capital Investment (as defined in Section 4.7 hereof), as it may change from time to time during the term of this Agreement, with each such calculation referred to herein as an “Accrual Calculation, “ and (ii) decreased by an amount equal to aggregate amounts distributed to the Investment Members in the aggregate pursuant to Section 6.2(b) hereof. Monthly amounts will be calculated based on a 30-day month compared to 360 days in a year. The Manager will cause an Accrual Calculation to made immediately prior to any distribution made pursuant to Section 6.2 of this Agreement and at any other time determined by the Manager.
  2. **No Interest**. No interest shall be paid on any present or future Investment

Member’s Current Pay Return Account balance.

* 1. **Purpose.** An Investment Member’s Current Pay Return Account, as determined and adjusted pursuant to this Section 4.5 is maintained solely for the purpose of determining the aggregate amount of net available cash to be distributed to the Investment Member pursuant to Section 6.2(b) hereof. A positive balance in an Investment Member’s Current Pay Return Account shall not represent a debt owed by either the Company or any other Member to that Investment Member.

## Section 4.6 Investment Member’s Preferential Return Account.

1. **General**. A preferential return account (an “**Investment Member’s Preferential Return Account**”) shall be maintained for each Investment Member and shall consist of an initial balance of zero (0) (i) increased upon each calculation date determined by the Manager from time to time by an amount necessary to provide the Investment Member with a cumulative, but not compounded, annual preference return on the Investment Member’s Net Capital Investment (as defined in Section 4.7 hereof), as it may change from time to time during the term of this Agreement, with each such calculation referred to herein as an “Accrual Calculation,” and (ii) decreased by an amount equal to the aggregate amounts distributed to the Investment Members in the aggregate pursuant to Sections 6.2(b) and 6.2(c)(i) hereof. The Manager shall cause an

Accrual Calculation to be made immediately prior to any distribution made pursuant to Section 6.2(c) or (e) of this Agreement and at any other time determined by the Manager. The annual preference return for the first $12 million of Capital Contributions made by Investment Members pursuant to Subscription Agreements shall be twelve percent (12%), and the annual preference return for all subsequent Capital Contributions made by Investment Members thereafter shall be ten percent (10%).

1. **No Interest**. No interest shall be paid on any present or future Investment Member’s Preferential Return Account balance.
2. **Purpose**. An Investment Member’s Preferential Return Account, as determined and adjusted pursuant to this Section 4.6, is maintained solely for the purpose of determining the aggregate amount of net available cash to be distributed to the Investment Members pursuant to Section 6.2(c)(i) hereof. A positive balance in an Investment Member’s Preferential Return Account shall not represent a debt owed by either the Company or any other Member to that Investment Member.

**Section 4.7 Net Capital Investment**. A Member’s “**Net Capital Investment**” shall mean the net amount of (a) the Capital Contribution of the Member, less (b) the total amount distributed from the Company to the Member pursuant to Sections 6.2(c)(ii).

A Member’s Net Capital Investment, as determined and adjusted pursuant to this Section 4.7, shall be separate and distinct from the Member’s Capital Account described and maintained by Section 4.4 hereof, and will be maintained pursuant to this Section 4.7 solely for the purpose of determining the amount of cash to be distributed to the Member and the priority of such distributions pursuant to Section 6.2 hereof and for the maintenance of the Investment Member’s Current Pay Return Account pursuant to Section 4.5 hereof or the Investment Member’s Preferential Return Account pursuant to Section 4.6 hereof. A positive balance in a Member’s Net Capital Investment shall not represent a debt owed by either the Company or any other Member to that Member.

**Section 4.8 ERISA Members; Additional Regulation or Registration**. Notwithstanding anything herein to the contrary, if, at any time before payment of any portion of a Member’s Capital Contribution otherwise required is due, a Member shall obtain and deliver to the Manager an opinion of counsel (which counsel shall be reasonably acceptable to the Manager) or the Manager makes its own determination to the effect that (a) such Member is an ERISA Member and the assets of the Company may reasonably be deemed to constitute the assets of such ERISA Member under ERISA, or (b) the Member’s status would create a material risk of subjecting the Company or the Manager to any governmental regulation or registration which the Manager determines to be significant, the Capital Contribution of such Member shall be reduced accordingly, and such Member shall not, by reason of its failure to make such contribution, be deemed in default of this Agreement; provided that the Manager subsequently may (but shall not be obliged to) accept additional payments of such Member’s Capital Contribution from such Member upon receipt of an opinion of counsel (which counsel shall be reasonably acceptable to the Manager) to the effect that the legal conditions described in this paragraph no longer exist.

## ARTICLE 5

**RIGHTS, POWERS AND DUTIES OF THE MANAGER**

**Section 5.1 Management of Company; Appointment of Manager**.

**(a)** The full and entire management of the business and affairs of the Company is vested in the Manager and the Manager shall have exclusive control over the management of the Company’s business. No Member (except one who may also be the Manager or one of its members, and then only in his capacity as the Manager or member) shall participate in or have any control over the Company’s business or have any authority or right to act for or bind the Company, except as required by law. In dealings with the Members, or with or on behalf of the Company, the Manager shall act in good faith and in the manner it believes to be in, or not opposed to, the best interests of the Company and the Members.

**Section 5.2 Authorized Acts**. Subject to all other provisions of this Agreement, the Manager for, in the name of and on behalf of the Company, is hereby authorized to carry out and implement any and all of the objects and purposes of the Company, including, without limitation, the following:

1. to develop suitable overall investment strategies and standards for the Company;
2. to review, select, analyze, structure, negotiate and close investment transactions and enter into, execute, deliver and consummate all agreements, instruments and other documents without any further act, vote or approval of any Member and do all other acts the Manager deems advisable in connection with the Investments;
3. to monitor, supervise and direct the Investments of the Company and dispose of them in such manner and at such times as the Manager deems most advantageous to the Company;
4. to maintain accounts with brokers and to cause securities to be registered in the name of the Company, in the name of a nominee or street name;
5. to open, maintain and close bank accounts and draw checks or other orders for the payment of moneys;
6. to buy, sell, receive receipt for and otherwise dispose of and deal in all securities, checks, moneys and other personal property of the Company;
7. to hire and dismiss employees, attorneys, accountants, consultants, contractors and service providers;
8. to do any and all acts required of the Company with respect to its interest in any corporation, partnership, limited partnership or other business or legal entity;
9. to procure letters of credit or guarantees of the Company’s obligations

which may be required in connection with Company investments;

1. to maintain one or more offices within or without the State of Georgia and in connection therewith rent or acquire office space and do such other acts as may be advisable in connection with the maintenance of such offices;
2. to designate one or more employees or agents of the Manager to execute documents and instruments in the name of the Company and to guarantee the signatures of others to such documents and instruments, with the same effect as if the name of the Company had been signed under like circumstances by the Manager;
3. to adopt and authorize the use of a mechanically reproduced facsimile signature of the Company in connection with documents or instruments filed in the name of the Company;
4. to invest in securities or other assets together with one or more third parties through a joint venture, corporation, association or other entity and bear its *pro rata* share of the expenses of such investment to the same extent as if the investment in such assets were made directly by the Company;
5. to borrow funds to make Investments or for other purposes in connection

with the Company’s business, on a recourse or nonrecourse basis; and

1. to establish Reserves, including to set aside funds and allocate amounts to Reserves and to pay or distribute amounts from Reserves.

No Person dealing with the Company shall be required to investigate the authority of the Manager in dealing with the Company or any of its assets, nor shall any Person entering into a contract with the Company or relying on any such contract or agreement be required to inquire as to whether such contract or agreement was properly approved by the Manager. Any such Person shall be conclusively protected in relying upon a certificate of authority or a certificate of any material fact signed by the Manager, or in accepting any instrument signed by the Manager in the name and on behalf of the Company or the Manager.

**Section 5.3 Restrictions on Authority**. Notwithstanding any other provision of this Agreement, no rights or powers granted to the Manager may be exercised by the Manager if the exercise of such rights or powers will (i) adversely affect the status of the Company as a limited liability company or the limited liability of the Members, (ii) result in the Company, the Manager or any of their Affiliates being in violation of any statute, regulation, rule, order, judgment or decree of any federal or state governmental authority or body or court, (iii) require the Company to register as an investment company under the Investment Company Act of 1940, as amended, or any successor or similar statute, (iv) violate the Securities Act of 1933, as amended, or any successor or similar statute, or any rules or regulations promulgated thereunder, (v) knowingly cause any “prohibited transaction” as defined in Section 406 of ERISA or Section 4975 of the Code to occur with respect to any ERISA Member or (vi) result in the Company failing to be

classified as a partnership for federal income tax purposes or cause the Company to be classified as a publicly-traded partnership as defined in Sections 7704(b) or 469(k)(2) of the Code.

The Manager will not offer or sell interests to a minor or an incompetent except in trust (if such trust has the authority to own the Company Interest), or pursuant to the Uniform Gifts to Minors Act, the Uniform Transfers to Minors Act or any similar statute, or by will or intestate succession.

**Section 5.4 Permitted Investments; Restrictions**. The permitted Investments of the Company are those described in Section 2.3, as determined by the Manager in its sole discretion.

**Section 5.5 Investment Rights**. Subject to the last sentence of Section 3.5, neither the Company, nor any Member, shall have any rights in or to independent ventures of the Manager, Affiliates of the Manager, or any Member, or the income or profits derived therefrom.

**Section 5.6 Duties and Liabilities of the Manager**. The Manager shall devote substantial time to the Company’s business. The Manager may also engage in other businesses or activities whether or not similar in nature to the business or activities of the Company. Subject to the last sentence of Section 3.5, the Manager and its Affiliates may, notwithstanding the existence of this Agreement, engage in whatever activities they choose without having or incurring any obligation to offer any interest in such activities to the Company or any other Member. Neither this Agreement nor any activity undertaken pursuant hereto shall prevent the Manager or its Affiliates from engaging in such activities, or require the Manager or its Affiliates to permit the Company or any Member to participate in any such activities, and as a material part of the consideration for the Manager’s execution hereof and admission of the Members, the Members hereby irrevocably waive, relinquish and renounce any such right or claim of participation. The Manager shall not be liable, responsible or accountable in damages or otherwise to any Member for any act or omission of the Manager made in good faith on behalf of the Company and in a manner reasonably believed by the Manager to be within the scope of the authority granted to the Manager by this Agreement and in the best interests of the Company, or for the negligence, dishonesty, or bad faith of any employee, broker or other agent of the Company selected by the Manager with reasonable care. The Manager shall be entitled to rely on the advice of counsel and shall be wholly protected as to action taken or omitted to be taken in good faith in reliance on such advice.

**Section 5.7 Indemnification of the Manager, *etc..*** The Company will indemnify and hold harmless the Manager and its Affiliates and their respective directors, officers and employees (each an “**Indemnified Party**”) from and against liabilities arising in connection with the Company, provided that the Company’s obligations shall not apply to the Indemnified Party’s intentional misconduct, knowing violation of law or any transaction for which the Indemnified Party received a personal benefit in violation or breach of any provision of this Agreement. The Company shall be subrogated to any rights of the Indemnified Party to indemnification or contribution from a corporation or other entity. The right of indemnification provided by this Section 5.7 shall not be exclusive of other rights to which any Indemnified Party may be entitled as a matter of law or otherwise.

The Company shall pay to the Indemnified Party all costs and expenses incurred by it or him in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding to which it or he may be made a party, or with which it or he may be threatened, by reason of its or his being or having been the Manager (or an Affiliate, partner or employee thereof) of the Company (or a director or officer of any corporation which he serves or has served as a director or officer at the request of the Company as authorized by the Manager in the specific case) upon receipt of an undertaking by or on behalf of the Indemnified Party, to repay such amount unless it shall ultimately be determined that it or he is entitled to be indemnified and so long as either the Indemnified Party shall provide security for such undertaking, or an independent legal counsel, in a written opinion, shall determine, based on a review of readily available facts, that there is reason to believe that the Indemnified Party ultimately will be entitled to indemnification pursuant to this Section 5.7.

Any indemnity under this Section 5.7 shall be provided out of and to the extent of Company assets only, and no Member shall have any personal liability on account thereof. The Company may acquire and maintain at its expense policies of insurance with respect to, among other things, potential obligations and liabilities of the Company pursuant to this Section 5.7.

Neither the Manager nor any Affiliate shall be liable to the Company or any Member in respect of actions or omissions if the party claiming exculpation would also be entitled to indemnification with respect to such action or omission.

**Section 5.8 Authorization of Company Action**. Whenever action by the Company is required, except as otherwise specifically provided herein or in the Act, such action shall be taken by the Manager.

## Section 5.9 Compensation of the Manager.

1. **Asset Management Fee**. The Manager shall be compensated for services rendered to the Company during the term of the Company by the payment in cash to the Manager of an annual asset management fee (the “**Asset Management Fee**”) equal to one and a quarter percent (1.25%) of the aggregate Net Capital Investment, determined and payable as of the Initial Closing and thereafter throughout the Term of the Company quarterly. The Asset Management Fee shall be funded through Capital Contributions or, if available, from cash flows of the Company. The Manager will reserve amounts sufficient to fund Asset Management Fees as they become due and payable. Any unused reserves will be distributed to Members.
2. **Acquisition Fee.** The Manager shall receive a one-time fee for services rendered in connection with the Fund’s investments in real estate projects (the “**Acquisition Fee**”) equal to eighty five basis points (0.85%) of the amount the Fund invests in each real estate project. The Acquisition Fee will be determined and payable at the time the Fund closes its investment in real estate projects.

## Section 5.10 Expenses of the Company.

1. **Payment of Costs and Expenses; Formation Costs; Allocation of Interim Expenses**. Legal, consulting and accounting fees, printing expenses, out-of-

pocket costs related to due-diligence incurred by the selling group or managing broker dealer, and all other expenses (including out-of-pocket pre-organization expenses incurred by the Manager or its Affiliates) (“**Formation Costs**”) reasonably incurred in connection with the organization of the Company will be paid by the Company and shall not be an expense of the Manager.

1. **Operating Expenses**. Subsequent to the organization of the Company, except as provided below, the Company will bear and be charged with all other costs and expenses of the Company’s activities and operations, including, without limitation:
   1. all fees, costs and expenses, if any, incurred in acquiring, owning, operating, developing, negotiating, structuring, evaluating, holding, insuring, maintaining, repairing, rehabilitating, renovating, remediating, leasing, financing, refinancing, disposing of or otherwise dealing with Investments, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto, and the costs of rendering financial assistance to or arranging for financing for any assets or businesses constituting Investments;
   2. all fees, costs and expenses, if any, incurred in monitoring Investments, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto;
   3. all fees, costs and expenses incurred in evaluating, developing, renovating, negotiating, structuring, acquiring, financing, disposing of or otherwise dealing with any investment pursued for the Company in which the Company does not invest, including, without limitation, any travel, legal and accounting expenses and other fees and out-of-pocket costs related thereto, and the costs of rendering financial assistance to or arranging for financing for any assets or businesses constituting any such investment;
   4. taxes of the Company, fees of auditors, counsel and other advisors of the Company, insurance costs of the Company and the Manager and litigation costs of the Company;
   5. administrative expenses related to the Company’s operation, including without limitation the fees and expenses of accountants, lawyers, transfer agents and other professionals incurred in connection with the Company’s financial reporting, legal opinions and tax return preparation, as well as expenses associated with the distribution of reports and notices to the Members, but specifically excluding the Manager’s Overhead Expenses;
   6. interest expenses, brokerage commissions and other investment costs incurred by or on behalf of the Company;
   7. all fees, costs and expenses of consultants to assess, evaluate, appraise, plan, design, obtain permits, process applications, repair, replace, renovate, and otherwise operate any Investment;
   8. the Asset Management Fee and Acquisition Fee;
   9. all other customary expenses; and
   10. amounts to be contributed or advanced to any Investment for the purpose of such entity or investment paying any cost of the type described in the foregoing clauses (i) through (x) (such expenses, the “**Operating Expenses**”).

To the extent any Operating Expenses are paid by the Manager, such Operating Expenses shall be reimbursed by the Company.

1. **Overhead Expenses**. The Manager will bear its own Overhead Expenses

associated with the Company’s activities.

## Section 5.11 Tax Matters Member.

1. **Tax Matters Partner**. For fiscal years of the Company ending prior to January 1, 2018 (or if the effective date of Section 1101 of the Bipartisan Budget Act of 2015 (the “**BBA**”) is extended, such later extended date), the “tax matters partner,” as defined in Section 6231 of the Code, of the Company (the “**Tax Matters Partner**”) shall be the Manager. All expenses incurred by the Tax Matters Partner, or the Partnership Representative, in its capacity as such (including professional fees for such accountants, attorneys and agents as the Tax Matters Partner, or the Partnership Representative, in its sole and absolute discretion determines are necessary to or useful in the performance of its duties in that capacity) shall be borne by the Company.
2. **Partnership Representative**. For fiscal years of the Company beginning after December 31, 2017 (or if the effective date of Section 1101 of the BBA is extended, such later extended date): (i) the Manager shall be designated the “partnership representative” within the meaning of Section 6223(a) of the Code (the “**Partnership Representative**”); (ii) the Company and each Member agree that they shall be bound by the actions taken by the Partnership Representative, as described in Section 6223(b) of the Code; (iii) the Members consent to the election set forth in Section 6226(a) of the Code and agree to take any action, and furnish the Manager with any information necessary, to give effect to such election if the Manager decide to make such election; and (iv) any imputed underpayment imposed on the Company pursuant to Code Section 6232 of the Code (and any related interest, penalties or other additions to tax) that Mill Green Partners, LLC reasonably determines is attributable to one or more Members shall be promptly paid by such Members to the Company (*pro rata* in proportion to their respective shares of such underpayment) within 15 days following the Manager’s request for payment (and any failure to pay such amount shall result in a subsequent reduction in distributions otherwise payable to such Member plus interest on such amount calculated at 5% per annum). Any references to Code Sections set forth in this Section 5.11(b) refer to those Sections of the Code as in effect for fiscal years of the Company beginning after December 31, 2017 (or if the effective date of Section 1101 of the BBA is extended, such later extended date). For the avoidance of doubt, (i) the costs of any action taken by or on behalf of the Partnership Representative, the Manager, the Company or their

respective Affiliates pursuant to this paragraph shall be borne by the Member (together with the other Members similarly benefitting from such actions, in proportion to their respective Capital Contributions), (ii) the Partnership Representative will be entitled to rely conclusively on the advice of the Company’s independent accountant or other tax advisor in making any determination in respect of the partnership tax audit rules prescribed by the BBA, and (iii) neither the Partnership Representative nor any Manager will be required to indemnify any Member or the Company with respect to any taxes incurred under such partnership tax audit rules. Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 5.11 shall survive the liquidation or dissolution of the Company and each Member agrees to continue to be bound to the terms of this Section 5.11 following such Member’s termination of its interest in the Company.

**Section 5.12 Withholding**. To the extent the Company is required by federal, state or local law or any tax treaty to withhold or to make tax payments on behalf of or with respect to any Member, the Company shall withhold amounts from distributions to Members and make such tax payments as so required. The amount of such payments shall constitute an advance by the Company to such Member and shall be repaid to the Company by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member or, if such proceeds are insufficient, such Member shall pay to the Company the amount of such insufficiency.

**Section 5.13 Manager and Related Party Loans**. The Manager or any Affiliate thereof may (but will not be required to) lend funds to the Company on an unsecured basis or secured by Capital Commitments when and as needed, and the Manager or Affiliate who loans funds to the Company shall be treated, in respect of such loan(s), as a creditor of the Company. Such loans will be repaid as and when the Company has funds available therefore, and such loans and interest thereon will constitute obligations of the Company senior to the Member’s interests in the Company. Interest will accrue on such loans at a rate equal to the greater of (i) the prime rate (as published by the Wall Street Journal from time to time), as adjusted from time to time, plus three percent (3%) per annum or (ii) the rate charged to the Manager or its Affiliates to borrow such funds to be loaned to the Company.

**Section 5.14 Leverage**. Subject to the discretion of the Manager to borrow additional amounts, Company may incur indebtedness to the extent that such indebtedness is required to finance working capital needs of the Company or to fund approved Investments on a short term basis prior to receiving Capital Contributions. In addition, the Company may choose to leverage its assets to meet unexpected capital needs for existing approved investments, not to exceed

$1,000,000 in debt. The Investment Entities may utilize the leverage available in the marketplace, taking into account various market conditions, including, but not limited to, available interest rates and other costs of capital and the impact of leverage upon expected returns.

## ARTICLE 6

**ALLOCATIONS OF NET PROFITS AND NET LOSSES; CASH DISTRIBUTIONS; MAINTENANCE OF CAPITAL ACCOUNTS**

**Section 6.1 Allocation of Net Profits and Net Losses**. Except as otherwise provided in this Agreement, all items of income, gain, loss and deduction comprising the Net Profits or Net Losses of the Company for each Fiscal Year will be allocated among the Members in accordance with each Member’s economic interest in the respective item, as determined by the Manager pursuant to Section 704(b) and (c) of the Code and the related Regulations. Unless the Manager determines otherwise, allocations will be made among the Members such that the Capital Account of each Member, immediately after giving effect to such allocations, shall equal, as nearly as possible, (i) the amount of the distributions that would be made to such Member if

1. the Company were dissolved and terminated, (B) its affairs were wound up and each of its remaining assets were sold for its Gross Asset Value (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), (C) all liabilities of the Company were satisfied, and (D) the net assets of the Company were distributed to the Members in accordance with Section 6.2 immediately after making the allocation, minus (ii) the Member’s share of Company minimum gain and Member nonrecourse debt minimum gain within the meaning of Regulations Section 1.704-2, computed immediately before the hypothetical sale of assets, minus (iii) the Member’s obligation to make any Capital Contribution at the time pursuant to Article 4 of this Agreement.

## Section 6.2 Distributions.

* 1. The Company may make distributions of any Net Company Proceeds in excess of its reasonable operating requirements (and reasonable reserves thereof), as determined by the Manager from time to time, as provided in this Section 6.2. Notwithstanding the foregoing, no distribution shall be made unless after the distribution the Company retains assets sufficient to pay all its debts as they become due and such distribution, if made, would not cause the Company to otherwise become insolvent.
  2. To the extent of available Net Company Proceeds pursuant to Section 6.2(a), cash shall be distributed monthly to the Investment Members in proportion to the positive balances in the respective Investment Member’s Current Pay Return Accounts maintained pursuant to Section 4.5 hereof until each Investment Member’s Current Pay Return Account has been reduced to zero. These payments will be made monthly on the 15th day following month-end (or the Friday before the 15th if the 15th falls on a weekend day).
  3. The Manager in its sole discretion may distribute Net Company Proceeds among the Members within thirty (30) days after the end of each calendar quarter (or sooner, in the discretion of the Manager). All distributions of Net Company Proceeds shall be made in accordance with the priorities described below:
     1. First, 100% to the Investment Members in proportion to the positive balances of their respective Investment Member’s Preferential Return Accounts maintained pursuant to Section 4.6 hereof until each Investment Member’s Preferential Return Account has been reduced to zero (0);
     2. Second, 100% to the Investment Members in proportion to the positive balances of their respective Net Capital Investments maintained pursuant

to Section 4.7 hereof at that time until the Net Capital Investment of each Investment Member has been reduced to zero (0);

* + 1. Third, thereafter, 75% to the Investment Members *pro rata* according to their relative Investment Membership Units at that time, and 25% to the Management Member.
  1. The Manager may withhold from any distributions amounts necessary for operating or funding the Investments and to create, in its discretion, appropriate reserves for Company obligations, activities, Operating Expenses and required tax withholdings, if any. Taxes paid or withheld that are allocable to one or more Members or Investments will be deemed to have been distributed to such Members for the purposes of applying the above calculations.
  2. Notwithstanding the foregoing, to the extent of available cash, the Manager may in its discretion cause the Company to make distributions from time to time to the Members, including the Manager, in amounts sufficient to permit the payment of the Member’s tax obligation in respect to income allocations. Any such distributions shall be taken into account as an advance distribution in making subsequent distributions to the Members.

**Section 6.3 Allocation of Components of Net Profits and Net Losses for Income Tax Purposes**. For income tax purposes, each item of income, gain, loss and deduction of the Company shall be allocated among the Members in the same manner as the corresponding items of Net Profits and Net Losses and specially allocated items are allocated for Capital Account purposes; provided, that in the case of any Company asset the Gross Asset Value of which differs from its adjusted tax basis for United States federal income tax purposes, income, gain, loss and deduction with respect to such asset shall be allocated solely for income tax purposes in accordance with the principles of Sections 704(b) and (c) of the Code (in any permitted manner determined by the Manager) so as to take account of the difference between Gross Asset Value and adjusted basis of such asset.

**Section 6.4 Priority of Allocations**. All items of income, gains, expenses, deductions, losses and credits shall be credited or charged, as the case may be, to the Members’ Capital Accounts as of the date at which such tax items are determined and distributions shall be charged to the Members’ Capital Accounts as of the date made.

**Section 6.5 Minimum Gain Chargeback**. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provisions of this Article 6, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member shall be specially allocated items of Company Net 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 Regulations 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) and 1.704-2(j)(2) of the Regulations. This Section 6.5 is intended to comply with the minimum gain chargeback

requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

**Section 6.6 Qualified Income Offset**. Notwithstanding any other provisions of this Article 6, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), that causes or increases an Adjusted Capital Account Deficit of such Member, items of Company Net Profits shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, an Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6.6 shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 6 have been tentatively made as if this Section 6.6 were not in the Agreement.

**Section 6.7 Maintenance of Capital Accounts**. The Manager shall cause the Capital Accounts of the Members to be determined and maintained in accordance with Section 704(b) of the Code.

## Section 6.8 Amendments to Article 6 Allocation Provisions.

1. The provisions of this Article 6 relating to allocations of Net Profits and Net Losses may be amended at any time by the Manager if necessary, in the opinion of tax counsel of the Company, to ensure that there will be “substantial authority,” within the meaning of Section 6661 of the Code, that the allocations hereunder will be respected by the Internal Revenue Service, so long as any such amendment does not materially change the relative economic interests of the Members.
2. In addition to the amendments permitted under Section 6.8(a), if the Manager determines that it is advantageous to the business of the Company to amend the provisions of this Article 6 relating to allocations of Net Profits and Net Losses so as to permit the Company to avoid the characterization of Company income allocable to Exempt Members as constituting UBTI within the meaning of the Code, specifically including, but not limited to, amendments to satisfy the so-called “fractions rule” contained in Code Section 514(c)(9), the Manager is authorized, in its discretion, to amend this Agreement so as to allocate income, gain, loss, deduction or credit (or items thereof) arising in any year differently than as provided for in this Article 6 if, and to the extent, that such amendments will achieve such result or otherwise permit the avoidance of characterization of Company income as UBTI to Exempt Members. Any allocation made pursuant to this Section 6.8(b) shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement, and no further amendment of this Agreement or approval by any Member shall be required to effectuate such allocation. In making any such allocations under this Section 6.8(b) (“**New Allocations**”), the Manager is authorized to act in reliance upon advice of counsel to the Company or the Company’s regular certified public accountants that, in their opinion, after examining the relevant provisions of the Code and any current or future proposed or final Regulations thereunder, the New Allocation will achieve the intended result of this Section 6.8(b). New Allocations made by the Manager in reliance upon the advice of counsel or

accountants as described above shall be deemed to be made in the best interests of the Company and all of the Members, and any such New Allocations shall not give rise to any claim or cause of action by any Member against the Company or any Manager. Nothing herein shall require or obligate the Manager, by implication or otherwise, to make any such amendments or undertake any such action.

**Section 6.9 UBTI**. The Manager may (but shall not be required to) cause the Company to utilize one or more additional investment funds, accounts or similar arrangements, including REITs, to accommodate the concerns of Exempt Members. If the Manager recognizes that a prospective item of income would constitute UBTI, then the Manager will provide to each Exempt Member such information with respect to such prospective item of income as such Exempt Member may reasonably request to enable such Exempt Member to prepare any tax return with respect thereto.

**Section 6.10 Effectively Connected Income**. If income from any Investment Entity is treated as income that is “effectively connected with the conduct of trade or business within the United States” as defined in Section 864 of the Code (including by reason of Section 897 of the Code) (“**ECI**”), the Manager is hereby authorized to cause the Company to advance on behalf of any Member which is a Foreign Person, or pay an amount equal to the amount of U.S. federal, state or local income or other tax, and any related penalties, interest or other payments, that the Manager determines the Company or the Manager is required to withhold or to pay to a taxing authority with respect to or on behalf of such Member which is a Foreign Person, and to file all necessary reports relating to such withholding or payment as may be required by law. The Manager shall notify such Member of the amount of such advance, and such Member (whether or not it is then a Member) shall promptly pay over to the Manager cash equal to such amount. In the event a Member fails to repay any advance under this Section 6.10, the Manager is hereby authorized to withhold out of any distributions that would otherwise be made to such Member the amount so advanced. Any payment by a Member which is a Foreign Person hereunder shall not be treated as a Capital Contribution to the Company nor be taken into account in computing such Member’s right to distributions under this Agreement. Each Member which is a Foreign Person shall indemnify the Company and the Manager and hold each of them harmless from any liability with respect to any taxes, penalties or interest required to be withheld or paid to any taxing authority by the Company or the Manager for or on behalf of such Member or with respect to such Member.

## ARTICLE 7

**TERMINATION OF THE COMPANY, LIQUIDATION DISTRIBUTION**

**Section 7.1 Termination**. The Company shall be terminated and its affairs wound up upon the happening of any of the following events:

1. The expiration of the Term of the Company;
2. The determination of the Manager with the agreement of sixty six and two-thirds percent (66 2/3%) in interest of the Investment Members (determined by reference to their respective Investment Membership Units);
3. The adjudicated Bankruptcy of the Manager;
4. Dissolution by operation of law or judicial decree.

**Section 7.2 Liquidation**. Upon dissolution of the Company, the property and business of the Company shall be liquidated reasonably promptly by the Manager, acting as liquidating agent.

**Section 7.3 Capital Account Deficits**. The Manager shall not be liable for the return to

the Members of their Capital Contributions or any deficit in the Members’ Capital Accounts.

**Section 7.4 Liquidation Distribution**. Subject to Section 8.4(b), as soon as practicable after the effective date of a Liquidation of the Company, whether by expiration of its full Term or otherwise, but in any event within one year after Liquidation of the Company, the Company’s assets shall be applied and distributed in the following manner and order of priority:

1. the claims of all creditors of the Company who are not Members shall be paid and discharged;
2. the claims of all creditors of the Company who are Members shall be paid and discharged;
3. the remaining assets of the Company shall be distributed to the Members in accordance with Section 8.4, provided that if, upon the dissolution of the Company there are any claims against the Company the probable loss from which cannot, in the judgment of the Manager or other Person liquidating the Company, be accurately ascertained, such claims shall initially be taken into account in computing Capital Accounts upon liquidation and distributions pursuant to Section 8.4. The Manager or other Person liquidating the Company shall initially estimate an amount sufficient to cover any probable loss or liability on account of such claims and the Company shall retain that amount. Upon final settlement of such claims or a determination by the Manager or other Person liquidating the Company that the probable loss therefrom can be accurately ascertained, such claims shall be taken into account in the amount at which they were settled or in the amount of the probable loss therefrom in computing Capital Accounts on liquidation and amounts distributable pursuant to Section 8.4, and any excess funds retained shall be distributed in accordance with such provision.

## ARTICLE 8

**WITHDRAWAL OF A MEMBER; LIQUIDATION**

**Section 8.1 Death or Incompetency of Member**. Upon the death or incompetency of any Member who is a natural person, if the Manager so approves, his or her estate or legal representative (or upon the event of any person who is a Member in the capacity of a trustee ceasing to serve as such trustee, the successor trustee) shall be substituted for and continue as a Member of the Company.

**Section 8.2 Withdrawal of a Member**. Except as otherwise set forth in this Agreement, no Member shall have the right to withdraw from the Company or to withdraw his or her capital

from the Company without the consent of the Manager, which consent will be granted only in unusual and unanticipated situations.

Any Exempt Member which is an employee benefit plan subject to the provisions of ERISA or which elects to comply with provisions of ERISA (an “**ERISA Member**”) may elect to withdraw from the Company (or the Manager may redeem the ERISA Member’s Company Interest) if (a) the Manager or the ERISA Member shall obtain an opinion of counsel (which counsel shall be reasonably acceptable to the Manager) to the effect that, the provisions of any statute, rule, regulation or judicial order, the trustees of the ERISA Member would have liability for the acts or omissions of the Manager or the assets of the Company may reasonably be deemed to constitute the assets of such ERISA Member under ERISA, and (b) despite the best efforts of such ERISA Member and the Manager, such ERISA Member shall not be able to effectuate a sale, prior to the date of its withdrawal, to any entity which is reasonably deemed by the Manager to be a substantial and sophisticated investor, of the ERISA Member’s interest in the Company, at a fair and reasonable price and on the other mutually agreeable terms and conditions and which sale is not otherwise prohibited by ERISA. Each ERISA Member, however, understands that, in the event that the assets of the Company shall constitute “plan assets” of that ERISA Member within the meaning of the Plan Regulations, such ERISA Member’s sole remedy will be to exercise its withdrawal rights in accordance with and subject to the procedures specified in this Section 8.2.

Any Member who shall enjoy the right to withdraw from the Company pursuant to this Section 8.2 shall have its Capital Account adjusted to the following amount prior to the Liquidation of its interest under Section 8.4, which liquidation, in the case of any ERISA Member, shall take place within sixty (60) days of such Member’s election to withdraw from the Company pursuant to this Section 8.2.

Any positive balance in his Capital Account shall be increased by his share of the amount of Net Profits or decreased by his share of the amount of Net Losses for the current Fiscal Year as indicated by the latest available financial statement of the Company at the time of such withdrawal.

**Section 8.3 Delay in Payment**. The Manager may delay payment of all, or such portion of, the amounts payable to any Member under this Article 8, for such period as it deems reasonably necessary for fiscal year-end audit adjustments and to protect the Company in respect of any unliquidated claims, liabilities or charges relating to business done prior to such withdrawal or reduction in interest.

## Section 8.4 Distribution of Assets on Liquidation.

1. Upon Liquidation of the Company, the proceeds of such Liquidation shall be distributed in accordance with Section 6.2(c), and upon Liquidation of any Member’s interest in the Company.
2. In the case of any Liquidation of the Company which results solely from the termination of the Company for federal income tax purposes under Section 708(b)(1)(B) of the Code, deemed (but not actual) liquidating distributions shall be

constructively made to the Members, and the Company shall be reformed for federal income tax purposes, and deemed (but not actual) contributions shall be constructively made thereto, in accordance with Sections 704 and 708 of the Code and the Regulations thereunder.

1. Upon liquidation, each of the Members shall be furnished with a statement prepared by the Company which shall set forth the assets and liabilities of the Company as of the date of complete liquidation. Upon the Company complying with the foregoing distribution plan, the Members shall cease to be such and the Manager, as the sole remaining Member of the Company, shall execute, acknowledge and cause to be filed a certificate of termination of the Company or other appropriate documents evidencing its dissolution and winding up. Notwithstanding anything to the contrary contained herein, if the Manager has been removed and the Company has been dissolved, the Members may act for and bind the Company during the winding up period and receive reasonable compensation for such activity.

## ARTICLE 9 AMENDMENTS AND ELECTIONS

**Section 9.1 Amendments Requiring Approval of the Members**. Except as otherwise herein specifically permitted or required, this Agreement may be amended only with the consent of the Manager and at least sixty six and two-thirds percent (66 2/3%) in interest of the Investment Members (determined by reference to their respective Investment Membership Units), except that (a) no amendment to this Agreement shall increase the liability of any Member or alter any Member’s share of distributions, Net Profits or Net Losses of the Company without in each case the approval of the Manager and of all the Members, (b) all the Members must approve in writing any amendment of this Article 9 and Article 10 below, (c) no amendment of Section 5.3, Section 8.2 or of the definition of Capital Account in Article 1 shall be made unless each Exempt Member shall have approved such amendment, (d) no amendment of Sections 4.1, 5.3, 8.2 or 8.3 shall be made unless each ERISA Member shall have approved such amendment, and (e) no amendment increasing the responsibilities or duties of the Manager or decreasing the rights of or distributions to the Manager, or otherwise adversely affecting the Manager, shall be adopted without the Manager’s consent or approval. The parties hereto agree to execute any amendment hereto required to effect any change in this Agreement which has been authorized in the manner provided in this Article 9.

**Section 9.2 Amendments Not Requiring Approval of the Members**. Notwithstanding the foregoing and in addition to any amendments otherwise authorized herein, amendments may be made to this Agreement from time to time by the Manager, without the consent or approval of the Members:

1. to add to the duties or obligations of the Manager or to surrender any right or power granted to the Manager herein;
2. to cure any ambiguity, to correct or supplement any provisions herein which may be inconsistent with any other provision herein or to make any other provision

with respect to matters or questions arising under this agreement which will not be inconsistent with the provisions of this Agreement and the Act;

1. to delete or add any provision required to be so deleted or so added by the staff of the Securities and Exchange Commission or other federal agency or by the Attorney General of the State of Delaware, the Attorney General of the State of Georgia or any agency of any State which regulates the sale of securities in the State or any official of such agency or any similar such agency or official, which addition or deletion is deemed by such Commission, agency or official to be for the benefit or protection of the Members; and
2. to amend Article 6 as provided therein,

provided however, that no amendment shall be adopted pursuant to this section unless the adoption thereof (A) is not adverse to the interests of the Members, (B) is consistent with the purposes of the Company, and (C) does not affect the limited liability of the Members contemplated by this Agreement or the status of the Company as a limited liability company for federal income tax purposes.

**Section 9.3 Elections Concerning Any Successor to the Act**. The Manager may (i) elect to have the Company be governed by any statutes adopted to succeed or replace the Act as in effect on the date hereof, on or after the date any part of such successor or replacement statute takes effect, (ii) procure any permits, orders or approvals of any governmental authority in connection with such an election, and (iii) file any and all certificates or other documents necessary or appropriate thereto.

## ARTICLE 10

**LIMITATION ON ASSIGNABILITY OF INTEREST OF MEMBERS**

**Section 10.1 General Limitations**. The prior written consent of the Manager, which shall not be unreasonably withheld, shall be required for the assignment, pledge, mortgage or other hypothecation, sale or other disposition by any Member of any Membership Interest.

Each Member agrees that it will pay all reasonable expenses, including attorneys’ fees, expenses, disbursements and other charges, incurred by the Company in connection with a transfer of its Membership Interest by that Member. The Manager shall not be compensated for its efforts under this Section 10.1, unless otherwise agreed by the transferring Member.

Any attempted disposition of a Membership Interest without compliance with the provisions of this Agreement shall be void and ineffectual and shall not be binding upon the Company and the Company may refuse to recognize such attempted transfer for all purposes.

In the event of any disposition of a Member’s Membership Interest which shall result in multiple ownership, the Manager may require one or more trustees or nominees to be designated as representing a portion of or the entire interest transferred for the purpose of receiving all notices which may be given, and all payments which may be made, under this Agreement and for the purpose of exercising all rights which the transferor as a Member had pursuant to the

provisions of this Agreement. Every disposition of a Member’s Membership Interest shall be subject to all of the terms, conditions, restrictions and obligations of this Agreement.

**Section 10.2 Right of First Refusal**. In the event that (a) the Manager consents to a

transfer of a Member’s Membership Interest, pursuant to Section 10.1 of this Agreement, and

1. such transfer is a transfer or assignment other than a transfer or assignment to (i) a family member of such Investment Member or (ii) an entity controlled by such Investment Member and held for the benefit of such Investment Member’s estate, then the Investment Member purporting to transfer their Membership Interest (the “**Member Transferor**”) shall grant a right of first refusal to the Company and the Management Member to acquire such Member’s Membership Interest in accordance with the terms and conditions set forth below. The term “family member” as used herein shall mean any parent, spouse, lineal descendant, brother or sister. The Member Transferor shall give written notice to the Company of its intention to transfer its Membership Interest together with a narrative summarizing the economic terms of the offer for transfer (“**Offer**”) including, the amount and type of consideration being paid for such transfer, together with a description of all other material terms of the transfer. Upon receipt of such written notice, the Company shall have thirty (30) days (“**First Offer Period**”) to elect to purchase the Membership Interest of the Member Transferor on the same economic terms and conditions of the Offer. In the event that the Company elects to purchase the Membership Interest, then the Company shall have fifteen (15) days to close on the transfer of such Membership Interest. In the event that the Company elects not to exercise its right of first refusal, then the Management Member shall have fifteen (15) days following the First Offer Period to elect to purchase the Membership Interest of the Member Transferor on the same economic terms and conditions of the Offer. In the event that the Management Member elects to purchase the Membership Interest, then the Management Member shall have fifteen (15) days to close on the transfer of such Interest.

**Section 10.3 Income Tax and Other Limitations**. Notwithstanding any other provision of this Agreement, no transfer or assignment of any Member’s Membership Interest may be made if such transfer or assignment would result, in the opinion of counsel to the Company, in the termination of the Company or the treatment of the Company as an association taxable as a corporation for federal income tax purposes. Any transfer shall be made only upon receipt by the Company of a written opinion of counsel for the Company or of other counsel reasonably satisfactory to the Company (which opinion shall be obtained at the expense of the transferor) that such transfer will not result in (a) the Company or the Manager being subjected to any additional regulatory requirements (including those imposed by the Investment Company Act of 1940 and the Investment Advisers Act of 1940, as amended, and others which may be identified by the Manager at the time of the transfer), (b) a violation of applicable law or this Agreement, including the occurrence of a nonexempt “prohibited transaction” as set forth in Section 406 of ERISA or Section 4975 of the Code with respect to the Company or any of its Members, (c) the Company being classified as an association taxable as a corporation, (d) the Company being treated as a “publicly traded partnership” pursuant to Sections 7704(b) or 469(k)(2) of the Code, or (e) the Company being deemed terminated pursuant to Section 708 of the Code.

Notwithstanding anything to the contrary in this Agreement, (i) no Membership Interests shall be issued in a transaction that is (or transactions that are) registered or required to be registered under the Securities Act of 1933; and (ii) without the consent of the Manager, no

Membership Interest (or interest or unit of interest in the Company) shall be subdivided for resale into interests thereof smaller than an interest for which the Initial Capital Contribution to the Company would have been at least $100,000.

## Section 10.4 Substituted Members.

* 1. The Company shall not recognize, for any purpose, any purported transfer or other disposition of any Membership Interest unless such purported transfer or other disposition complies with the provisions of Section 10.3. Any transferee or other recipient of a Membership Interest (whether pursuant to a voluntary or involuntary transfer) shall be admitted to the Company as a Substituted Member only (i) if the requirements of Section 10.3 have been met, (ii) if the Member Transferor and the transferee have filed with the Company a certificate, in form satisfactory to the Manager, executed and acknowledged by the transferee, in which the transferee agrees to be bound by all of the provisions of this Agreement and which contains a power of attorney granted by the transferee to the Manager, substantially in the form of the power of attorney contained in the Agreement, to execute this Agreement and all amendments hereto on its behalf, (iii) if the transferee and the Member Transferor have filed with the Company a certificate, in form satisfactory to the Manager, executed and acknowledged by both the transferee and the Member Transferor representing that such transfer was made in accordance with all applicable laws and regulations, and (iv) upon an amendment to the books and records of the Company.
  2. Anything herein to the contrary notwithstanding, both the Company and the Manager shall be entitled to treat the Member Transferor as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such time as a transfer meeting all of the requirements of Article 10 has been made and a written assignment that conforms to the requirements of this Article 10 has been received by the Company and accepted by the Manager.

**Section 10.5 Section 754 Election**. In the event of a transfer of all or any fraction of a Member’s Membership Interest, including by sale or exchange or by reason of incapacity (including death) or the withdrawal of a Member, the Manager may either at the request of such Member or its successor in interest or without such a request, in any case, in its sole discretion, cause the Company to elect, pursuant to Section 754 of the Code, to adjust the basis of the Company’s assets. An initial application of the election under Section 754 of the Code will be made only if it will result in an upward adjustment of basis and if provision for reimbursement of Company costs and expenses associated therewith is made by the Member Transferor or its successor in interest to the reasonable satisfaction of the Manager. In respect of subsequent applications of such election, the Member Transferor or its successor in interest will also be required to reimburse the Company for associated expenses.

## ARTICLE 11 REMOVAL OF MANAGER

**Section 11.1 Removal of Manager**. Subject to Section 11.2, the Manager may not be removed at any time, nor may the Manager voluntarily withdraw from the Company.

**Section 11.2 Disqualification Event; Successor Manager**. Notwithstanding any provision to the contrary in this Agreement, in the event that any of the “bad actor” disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act of 1933, as amended (each, a “**Disqualification Event**”), is applicable to the Manager except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, then upon the vote or written consent of a majority in interest of the Investment Members (determined by reference to their respective Investment Membership Units), Mill Green Partners, LLC shall be removed from the position of Manager, and Mill Green Partners, LLC shall then appoint a replacement Manager, with such replacement Manager (the “**Successor Manager**”) to be approved by the vote or written consent of a majority in interest of the Investment Members (determined by reference to their respective Investment Membership Units). Upon the appointment and ratification of the Successor Manager, such Successor Manager shall have the power, authority and rights as the initial Manager as set forth in this Agreement, including the right to receive the distributions of Net Company Proceeds in accordance with Article 6 and the right to receive the Asset Management Fee in accordance with Section 5.9.

## ARTICLE 12

**FISCAL YEAR; RECORDS AND REPORTS**

**Section 12.1 Fiscal Year**. The Fiscal Year of the Company shall be the calendar year.

**Section 12.2 Records**. At all times the Manager shall keep books of account in which shall be entered fully and accurately the transactions of the Company. Such books of account, together with a certified copy of this Agreement and the Articles of Organization and any amendments thereto, shall at all times be maintained at the principal office of the Company and shall be open to inspection, review and copying by the Members or their duly authorized representatives.

**Section 12.3 Reports**. As promptly as possible after the close of each Company fiscal year, the Manager shall cause the independent certified public accountants for the Company to render to the Company their audit report on the financial statements of the Company as at the close of such Fiscal Year and the results of its operations for the period then ended beginning with the year-end after the Fund’s Final Closing. However, the Fund’s first audit report will include all periods from the inception of the Fund. The Manager, with the assistance of such accountants shall prepare all schedules and computations necessary for the determination of the amounts of Net Profits or Net Losses attributable to the Members. Within one hundred twenty

1. days after the close of each fiscal year of the Company, copies of such audit report of independent public accountants, as applicable, and of such financial statements for such fiscal year shall be made available to each Member, together with a report indicating each Member’s share of the income or losses of the Company for such fiscal year for federal income tax purposes. On a quarterly basis, beginning after the Fund’s Final Closing, the Manager will also transmit to each Member a report with an enumeration of all investments of the Company together with performance data on each of such investments. For all purposes of this Agreement and of the Company, whenever the valuation of the Company’s assets is required, it will be determined by the Manager in its sole judgment without an independent appraisal. Information

relating to the Company and its investments will not be disclosed by any Member without the consent of the Manager or as required by law.

The Manager shall file or cause to be filed all tax returns and other reports and effect such registrations which may be required pursuant to federal law or the laws of any jurisdiction in which the Company is doing business.

**Section 12.4 Annual Meeting**. The Company may, but is not obligated, to hold an annual meeting.

## ARTICLE 13 MISCELLANEOUS

**Section 13.1 Counterparts**. This Company Agreement may be executed by the Members in various counterparts, all of which shall constitute but one and the same agreement among the Members, and shall be binding upon the respective parties hereto, their respective legal representatives and assigns.

**Section 13.2 Governing Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware.

**Section 13.3 Further Assurances**. The Members will execute, acknowledge and deliver such further instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement.

**Section 13.4 Captions**. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of the provisions thereof.

**Section 13.5 Binding Effect**. Except to the extent required under the Act and for fees, rights to reimbursement, and other compensation provided as such, none of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditor of the Company.

**Section 13.6 Severability**. If one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby, and such remaining provisions shall be interpreted consistently with the omission of such invalid, illegal or unenforceable provisions.

*(SIGNATURE APPEARS ON FOLLOWING PAGE)*

**IN WITNESS WHEREOF**, the undersigned has caused this Agreement to be executed as of the date first above written.

## MILL GREEN OPPORTUNITY FUND IV,

**LLC,** a Delaware limited liability company, by its Manager:

## MILL GREEN PARTNERS, LLC,

a Delaware limited liability company

By: Manager

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**MEMBER CAPITAL CONTRIBUTION**

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## FORM OF PROJECT DEVELOPMENT OPERATING AGREEMENT

**Any securities created by this Operating Agreement have not been registered under the Georgia Securities Act of 1973, as amended, in reliance upon the exemption from registration set forth in Section 10-5-9(13) of such Act. In addition, any securities created by this Operating Agreement, if any, have not been registered with the United States Securities and Exchange Commission in reliance upon an exemption from such registration set forth in the Securities Act of 1933, as amended, provided by Section 4(2) thereof, nor have they been registered under the securities or Blue Sky laws of any other jurisdiction. The interests created hereby have been acquired for investment purposes only and may not be offered for sale, pledged, hypothecated, sold, or transferred except in compliance with the terms and conditions of this Operating Agreement and in a transaction which is either exempt from registration under such Acts or pursuant to an effective registration statement under such Acts.**

WHEREAS, DEVELOPER ENTITY, LLC, a Georgia limited liability company (“DE”) and MILL GREEN OPPORTUNITY FUND IV, LLC, a Delaware limited liability company (the “Fund”), desire to enter into this Agreement for purposes of forming a Georgia limited liability company, and memorializing the agreement of the parties with respect to the management of such company;

NOW, THEREFORE, in consideration of the premises the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

Unless otherwise specifically defined elsewhere herein, all capitalized terms shall have the meanings assigned to them in Section 15.23 hereof.

## ARTICLE II FORMATION OF COMPANY

* 1. ***Formation***. On , 2017, the Company was formed as a Georgia limited liability company by the filing of the Articles of Organization with the Secretary of State of Georgia in accordance with the provisions of the Georgia Act.
  2. ***Name***. The name of the Company is Developer Project, LLC.
  3. ***Principal Place of Business***. The principal place of business of the Company within the State of Georgia is , Atlanta, Georgia 30327. The Company may locate its places of business and registered office at any other place or places as the Manager may from time to time deem advisable.
  4. ***Registered Office and Registered Agent***. The Company’s initial registered office shall be , Atlanta, Georgia 30327. The initial registered agent is

. The registered office and registered agent may be changed from time to time pursuant to the Georgia Act and the applicable rules promulgated thereunder.

* 1. ***Term***. The term of the Company commenced on the date the Articles of Organization were filed with the Secretary of State of Georgia and shall continue until the Company is dissolved and its affairs wound up in accordance with the provisions of this Operating Agreement.
  2. ***Effective Date***. This Operating Agreement is effective as of the

, 2017.

## ARTICLE III BUSINESS OF COMPANY

th day of

The business of the Company shall be the ownership, development, management, and disposition of an ownership interest in the Project Entity, and service as managing member thereof, and any activity necessary, customary, convenient or incident to the foregoing.

## ARTICLE IV

**NAMES AND ADDRESSES OF MEMBERS**

The names and addresses of the Members are set out on Exhibit A attached hereto and incorporated herein.

## ARTICLE V MANAGEMENT BY MANAGER

* 1. ***Management***. The business and affairs of the Company shall be managed by its Manager. Except as otherwise provided herein, the Manager shall have full and complete authority, power, and discretion to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company’s business. Except as otherwise provided herein, at any time when there is more than one Manager, all decisions and actions of the Managers shall be approved by a majority of the Managers voting per capita. Notwithstanding any provision of this Section 5.1, the following actions require joint approval by the Fund and the Manager (each, a “Major Decision”):
     1. Disposition of the Project to a buyer other than Preferred Apartment Communities;
     2. A refinance of the Project, whether debt or equity;
     3. Voluntary bankruptcy proceedings concerning the Project Owner;
     4. Any change to DE’s Operating Agreement that would materially adversely affect the Fund’s investment;
     5. Material revisions to the Development Plan or the Development Budget, the construction loan or mezzanine loan that would materially adversely affect the Fund’s investment;
     6. Litigation matters affecting the Company; and
     7. The need for additional Capital Contributions for the Project.

The Fund shall, without unreasonable delay, approve or disapprove in good faith any Major Decision. Notwithstanding the foregoing or any other provision herein contained, the Manager shall not be required to obtain the approval of the Fund prior to taking any emergency action to prevent imminent risk to health and safety, imminent property damage, imminent imposition of criminal or civil sanctions against the Company or any Member or Manager, or imminent breach of any agreement with or obligation owed by the Company or the Manager to the Project Entity.

The Manager shall provide notice to the Fund of any material negotiations with any lenders or co-investors, however, such negotiations shall not be considered a Major Decision requiring joint approval by the Fund and the Manager.

* 1. ***Number, Tenure, and Qualifications***. The Company shall initially have one (1) Manager, and Developer Entity, LLC shall serve as Manager until its successor or successors shall have been elected and qualified or until its earlier resignation or removal. The number of Managers of the Company shall be fixed from time to time by the affirmative unanimous vote of Members, but in no instance shall there be fewer than one Manager. Each Manager shall hold office until his or its successor or successors shall have been elected and qualified or until his or its earlier death, dissolution, or removal. Subject to Section 5.10, Managers shall be elected by the affirmative unanimous vote of Members. Managers need not be residents of the State of Georgia, but shall be Members of the Company.
  2. ***Certain Duties and Powers of Manager***. Without limiting the generality of Section 5.1, and except as provided therein, the Manager shall have duty, power and authority, on behalf of the Company:

1. To perform its duties and undertake its responsibilities set forth in this Agreement and to act in good faith and in the best interests of the Company. The Manager agrees to keep the Fund informed as to the status of the Project and as to the operations of the Project Entity, and to obtain the consent of the Fund whenever such consent is required pursuant to this Agreement.
2. To borrow money for the Company from banks, other lending institutions, the Manager, Members, or Affiliates of the Manager or Members on such terms as the Manager deems appropriate, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;
3. To purchase commercially reasonable liability and other insurance in accordance with the Manager’s prudent and normal business practices, to protect the Company’s property and business, which at all times shall be in compliance with any lender’s requirements;
4. To hold and own any Company real and/or personal properties in the name of the Company;
5. To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper, or other investments;
6. To execute on behalf of the Company all instruments and documents, including, without limitation: checks; drafts; notes and other negotiable instruments; security agreements; financing statements; documents providing for the acquisition, mortgage, or disposition of the Company’s property; assignments; bills of sale; leases; partnership agreements, operating agreements of other limited liability companies; and any other instruments or documents necessary, in the opinion of the Manager, to the business of the Company;
7. To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;
8. To enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve;
9. To create offices and designate Officers, who need not be Members;
10. To do and perform all other acts as may be necessary or appropriate to the execution of an approved Operating Plan and Budget, Capital Budget, Development Budget, Development Plan, or Annual Business Plan;
11. To do and perform all other acts as may be necessary or appropriate to the conduct of the Company’s business;
12. To take appropriate emergency action to prevent imminent risk to health and safety, imminent property damage, or imminent imposition of criminal or civil sanctions against the Company or any Member;
13. To arrange, if not otherwise available, if requested by any Member for any year at the Member’s expense, for the preparation of an annual audited financial statement of the Company;

Unless authorized to do so by the Manager of the Company, no attorney-in-fact, employee, or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable peculiarly for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager to act as an officer or agent of the Company in accordance with this Section 5.3.

* 1. ***Liability for Certain Acts***. No Manager has guaranteed or shall have any obligation with respect to the return of a Member’s Capital Contributions or profits from the

operation of the Company. Notwithstanding Section 14-11-305(1) of the Georgia Act, no Manager shall be liable to the Company or to any other Member for any loss or damage sustained by the Company or any Member except loss or damage resulting from intentional misconduct or knowing violation of law or a transaction for which such Manager received a personal benefit in violation or breach of the provisions of this Operating Agreement. The Manager shall be entitled to rely on information, opinions, reports, or statements, including but not limited to, financial statements or other financial data prepared or presented by: (i) any one or more Members, the Manager, Officers, or employees of the Company whom the Manager reasonably believes to be reliable and competent in the matter presented, (ii) legal counsel, public accountants, or other persons as to matters the Manager reasonable believes are within the person’s professional or expert competence, or, if applicable, (iii) a committee of Managers of which he or it is not a member if the Manager reasonably believes the committee merits confidence.

* 1. ***Manager Has No Exclusive Duty to Company***. The Manager shall not be required to manage the Company as the Manager’s sole and exclusive function and the Manager 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 Operating Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom. No Manager shall incur liability to the Company or to any of the Members as a result of engaging in any other business or ventures.
  2. ***Bank Accounts***. The Manager may from time to time open bank accounts in the name of the Company, and the Manager and designated Officers shall be the sole signatories thereon, unless the Manager determines otherwise.
  3. ***Indemnity of the Manager, Members, and Officers***. To the fullest extent permitted by Section 14-11-306 of the Georgia Act, the Company shall indemnify each Manager and Member and make advances for expenses to each Manager and Member arising from any loss, cost, expense, damage, claim, or demand in connection with the Company, the Manager’s or Member’s status as a Manager or Member of the Company, the Manager’s or Member’s participation in the management, business, and affairs of the Company or such Manager’s or Member’s activities on behalf of the Company. To the fullest extent permitted by Section 14-11- 306 of the Georgia Act, the Company shall also indemnify its Officers who are not Managers or Members arising from any loss, cost, expense, damage, claim, or demand in connection with the Company, any such Officer’s participation in the business and affairs of the Company or such Officer’s activities on behalf of the Company.
  4. ***Resignation***. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of a Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager as a Manager shall not affect the Manager’s rights as a Member and shall not constitute a withdrawal of such Manager as a Member or an Event of Dissociation as to such Manager.
  5. ***Removal***. At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time, with or without cause, by the affirmative unanimous vote of the Members. The removal of a Manager as a Manager shall not affect the Manager’s rights as a Member and shall not constitute a withdrawal by such Manager as a Member or an Event of Dissociation as to such Manager.
  6. ***Vacancies***. Any vacancy occurring for any reason in the number of Managers of the Company may be filled by the affirmative vote of a majority of the remaining Managers then in office, provided that if there are no remaining Managers, the vacancy(ies) shall be filled by the affirmative unanimous vote of the Members. Any Manager’s position to be filled by reason of an increase in the number of Managers shall be filled by the affirmative vote of a majority of the Managers then in office or by unanimous vote of the Members at a meeting of the members called for that purpose. A Manager elected to fill a vacancy or fill a position resulting from an increase in the number of Managers shall hold office until its successor shall be elected and shall qualify, or until his or its earlier death, resignation, or removal.
  7. ***Salaries***. The salaries and other compensation of the Manager, if any, shall be fixed from time to time by unanimous vote of the Members, and no Manager shall be prevented from receiving such salary by reason of the fact that the Manager is also a Member of the Company. Any such salary shall be considered a “guaranteed payment” for the purposes of Section 707(c) of the Code.

## ARTICLE VI

**RIGHTS AND OBLIGATIONS OF MEMBERS**

* 1. ***Limitation on Liability***. Each Member’s liability shall be limited as set forth in the Georgia Act.
  2. ***No Liability for Company Obligations***. No Member will have any personal liability for any debts or losses of the Company.
  3. ***List of Members***. Upon written request of any Member, the Company shall provide a list showing the names, addresses, and Membership Interest of all Members, and the other information required by the Georgia Act and maintained pursuant to Section 11.2.
  4. ***Approval of Members***. The Members shall have the right, by the unanimous vote,

(i) to approve the merger of the Company within the meaning of Section 14-11-308(b)(2) of the Georgia Act, or (ii) to approve in the manner required by Article XIII of the addition of new Members, or (iii) to approve the dissolution of the Company as provided in Section 14.1(a)(i) hereof, or (iv) to approve any amendment to this Operating Agreement, provided, however, that no such approval by the Members is required for amendments that are necessary in connection with any transfer of an Interest under Article XII hereof (after obtaining the Member approval required thereunder) or any issuance of additional Interests under Article XIII hereof (after obtaining the Member approval required thereunder), or (v) to approve the sale, exchange, lease or other transfer of all or substantially all of the assets of the Company, other than as provided in the Purchase Option Agreement between the Project Entity and Preferred Apartment Communities Operating Partnership, L.P.. Except as otherwise provided in this Operating

Agreement, the other actions identified in Section 14-11-308(b) of the Georgia Act may be taken by the Manager without any further consent or approval of the Members.

## ARTICLE VII MEETINGS OF MEMBERS

* 1. ***Meetings***. Meetings of the Members, for any purpose or purposes, may only be called by the Manager or any Member.
  2. ***Place of Meetings***. The Persons calling any meeting may designate any place, either within or outside the State of Georgia, as the place of meeting for any meeting of the Members. If no designation is made the place of meeting shall be the principal executive office of the Company in the State of Georgia.
  3. ***Notice of Meetings***. Written notice stating the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than two (2) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager or Person calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at his address as it appears on the books of the Company, with postage thereon prepaid. Notice provided in accordance with this Section shall be effective notwithstanding anything in Section 14-11-311 of the Georgia Act to the contrary.
  4. ***Meeting of all Members***. If all of the Members shall meet at any time and place, either within or outside of the State of Georgia, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any lawful action may be taken.
  5. ***Record Date***. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order 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 such distribution is made, as the case may be, shall be the record date for such determination of Members unless the Members shall otherwise specify another record date. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.
  6. ***Quorum***. A majority in interest of the Members, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, those Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if at the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly

organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Members whose absence would cause less than a quorum to be present.

* 1. ***Manner of Acting***. The affirmative vote of a majority in interest of the Members shall be the act of the Members. Section 14-11-307 of the Georgia Act (relating to conflicting interest transactions) shall not apply in the case of the Company, and Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon such matter and their Membership Interests, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter was approved by the Members.
  2. ***Proxies***. A Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such written proxy shall be delivered to the Company.
  3. ***Action by Members Without a Meeting***. Action required or permitted to be taken by the Members at a meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the requisite Members entitled to vote required to approve such action. Action taken under this Section is effective when the Members required to approve such action have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.
  4. ***Waiver of Notice***. In lieu of any procedures contained in Section 14-11-312 of the Georgia Act, 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.
  5. ***Meeting by Telephone***. In lieu of any procedures contained in Section 14-11- 310(b)(3) of the Georgia Act, Members may also meet by conference telephone call if all Members can hear one another on such call and the requisite notice is given or waived.

## ARTICLE VIII

**CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

* 1. ***Members’ Capital Contributions***. Each Member has contributed the amount set forth next to such Member’s name on Exhibit A hereto as such Member’s Initial Capital Contribution.
  2. ***Additional Capital Requirements***. From time to time, the Manager may determine, in accordance with Section 5.1(ix) hereof or as required by any construction lender, that the Company requires additional funds (“Additional Capital”), and the Manager and the Fund shall follow the procedures set forth below with respect to the need for Additional Capital:
     1. If the need for Additional Capital is due to a construction cost overrun (including hard and soft costs) and is an event which should have been reasonably foreseen by the developer, had the developer adhered to commercially reasonable

standards (a “Controllable Overrun”), it being agreed that typical force majeure events and interest rate expenses cannot be reasonably foreseen, then DE shall be required to contribute 100% of such Additional Capital to the Owner (“Controllable Overrun Contributions”). Should DE fail to fund the full amount of any required Controllable Overrun Expenses (a “Controllable Overrun Contribution Shortfall”), the Fund may fund all or any portion of portion of such Controllable Overrun Contribution Shortfall (any amount of such Controllable Overrun Contribution Shortfall funded by the Fund, including all costs, expenses, fees and interest incurred by the Fund in connection with the same shall be referred to as a “Default Loan”). Default Loans, if any, shall earn a compounded annual rate of return of the internal rate of return of fifteen percent (15%) (the “IRR”), plus two hundred (200) basis points, which rate shall be hereinafter referred to as the “Default Loan Return”; or

* + 1. If the need for Additional Capital is not due to a Controllable Overrun, DE and MGP shall cooperate in good faith to determine and identify third-party capital sources. If DE and MGP are unable to agree after good faith negotiations on such third- party capital sources, then DE and the Fund shall each be required to contribute its “Pro Rata Share” of such Additional Capital (each, a “Capital Loan”). As used herein, “Pro Rata Share” shall mean the proportionate share of total net cash flow including net proceeds from a sale which DE and the Fund, respectively, are projected to receive based on the pro forma calculations of the Fund, which proportionate share shall be allocated as ninety percent (90%) attributable to the Fund and ten percent (10%) attributable to DE. Capital Loans, if any, shall earn a compounded annual rate of return equal to the lesser of

(i) 12%, and (ii) the maximum amount permitted pursuant to applicable laws (the lesser of (i) and (ii) is hereinafter referred to as the “Capital Loan Return”)). Should the Fund default in its obligation to make a required Capital Loan (a “Capital Loan Shortfall”), DE may, in its sole discretion, fund all or any portion of such Capital Loan Shortfall, including all costs, expenses, fees and interest incurred by the non-defaulting party in connection with the same (together, a “Shortfall Loan”), and such Shortfall Loan shall earn interest at the Default Loan Return rate (the “Shortfall Loan Return”).

* 1. ***Loans to Company***. To the extent approved by the Manager, any Member may make a secured or unsecured loan to the Company.

## ARTICLE IX DISTRIBUTIONS TO MEMBERS

### *Distributions*.

1. Except as provided in Section 14.3, all distributions of Distributable Cash shall be made to the Members as follows:
   1. First, 100% to the Fund until the Fund has received its Default Loan Return, if any;
   2. Second, 100% to the Fund until the Fund has received a return of its Default Loans, if any;
   3. Third, to the appropriate Party until it has received its Shortfall Loan Return,

if any;

* 1. Fourth, to the appropriate Party until it has received a return of any of its Shortfall Loans;
  2. Fifth, to DE until it has received its Capital Loan Return, if any;
  3. Sixth to either Party until such Party based on their Pro Rata shares until either or both parties have received a return of their Capital Loans, as applicable;
  4. Seventh, pro rata to the Fund and DE until each has received its fifteen percent return on its investment (“15% Preferred Return”);
  5. Eighth, pro rata to the Fund and DE until each has received a full return of its investment;
  6. Ninth, 100% to DE or its Manager, as defined in DE’s Operating Agreement, as applicable, until it has received a return of any of its Controllable Overrun Contributions;
  7. Tenth, (a) fifty percent (50%) to the Fund and (b) fifty percent (50%) to DE, until the aggregate distributions to the Fund with respect to its investment (including operating distributions) equals an eighteen percent (18%) IRR; and
  8. Thereafter, (a) thirty percent (30%) to the Fund and (b) seventy percent (70%) to DE.

1. In the event that there is not sufficient Distributable Cash to fulfill those distributions listed in Section 9.1(a)(i)-(viii) hereinabove, then the structures set forth in Section 9.1(a) shall not apply and the Distributable Cash shall be distributed to the Members as follows:
2. First, 100% to DE up to the amount that it would have received under the calculations set forth in Section 9.1(a)(i)-(viii);
3. Second, 100% of the remainder shall be paid to the Fund.
4. Following the dissolution of the Company as provided in Section 14.1 hereof, distributions shall be made in accordance with Section 14.3 hereof.
   1. ***Limitation Upon Distributions***. No distribution shall be made to Members if prohibited by Section 14-11-407 of the Georgia Act.
   2. ***Interest On and Return of Capital Contributions***. No Member shall be entitled to interest on its Capital Contribution or to a return of its Capital Contribution, except as otherwise specifically provided for herein.
   3. ***Priority and Return of Capital***. No Member or Economic Interest Owner shall have priority over any other Member either as to the return of Capital Contributions or as to Net Profits, Net Losses, or distributions, except as otherwise specifically provided for herein. This Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.
   4. ***Tax Liability Distributions.*** Notwithstanding the foregoing, to the maximum extent possible without requesting additional capital or borrowing funds to do so, on or before the tenth day of January, April, June and September of each year with the intent to meet estimated tax payment obligations, the Manager shall make distributions of Distributable Cash to the Members in an amount equal to the excess of (i) forty percent (40%) of the estimated Adjusted Allocated Taxable Income (as hereinafter defined) of all Members for such Fiscal Year as determined through the end of the immediately preceding calendar quarter, less (ii) the sum of

(A) all Tax Distributions previously made in any such Fiscal Year and (B) all distributions under Section 9.1(a) to each Member made since the beginning of such Fiscal Year (the “Tax Distribution”). Additionally, Tax Distributions may be made when the tax returns are filed to the extent not previously distributed to fund the estimated tax obligations as set forth above. Any such distributions to the Members shall be made in proportion to the Adjusted Allocated Taxable Income of each Member. The “Adjusted Allocated Taxable Income” of a Member shall be the estimated taxable income of the Company, if any, which is allocated to such Member for the applicable period. For this purpose any income, gain, loss, depreciation and other deduction which is recognized and allocated to a Member pursuant to Section 704(c) of the Code shall be excluded and tax distributions shall not be made with respect to such amount(s). Any overpayment of distributions made under this Section 9.5 shall be carried over to subsequent Fiscal Years and treated as a current distribution until it is used. Any Tax Distributions shall be considered prepayments of amounts payable pursuant to Section 9.1.

## ARTICLE X

**ALLOCATION OF NET PROFITS AND NET LOSSES**

* 1. ***Net Profits***. Subject to the provisions of Section 10.3, below, all Net Profit for each Fiscal Year (including that from Capital Transactions) shall be allocated as follows:
     1. First, to the Members until the aggregate allocations of Net Profits pursuant to this Section 10.1 for all Fiscal Years or portions thereof equals the aggregate allocations of Net Losses to each Member pursuant to Section 10.2, below, for all Fiscal Years or portions thereof, in the reverse order of, and in proportion to, such prior allocations of Net Losses;
     2. Thereafter, to the Members on the same order and priority that Distributable Cash is distributable pursuant to Section 9.1 (other than Sections 9.1(a)(ii)(iv)(vi)(viii) and (xi)).
  2. ***Net Losses***. Subject to the provisions of Section 10.3, below, all Net Losses for any Fiscal Year shall be allocated in the reverse order and priority as Net Profit has been allocated under Section 10.1(ii) to the extent that aggregate allocations of net profits have not previously been offset by loss allocations in which event losses shall be allocated pro rata to the extent of unreturned capital contributions have been made in the reverse priority of Distributable Cash. Provided, however, that to the extent any Net Losses allocated to a Member would cause such Member (a “Restricted Member”) to have an Adjusted Capital Account Deficit as of the end of the Fiscal Period to which such Losses relate, such Net Losses shall not be allocated to such Restricted Member and instead shall be allocated to the other Member(s) (“Permitted Members”) in proportion to, and to the maximum extent that, the amounts in which such Net

Losses may be allocated to the Permitted Members without causing any of the Permitted Members to have an Adjusted Capital Account Deficit.

* 1. ***Alternative Allocations***. It is the intent of the Members that each Member’s distributive share of income, gain, loss, deduction, or credit (or item thereof) be determined and allocated consistently with the provisions of the Code, including Sections 704(b) and 704(c) of the Code. If in connection with the issuance of the Interests or if for any other reason, the Manager deems it necessary in order to comply with the Code, the Manager may, and it hereby is authorized and directed to, allocate income, gain, loss, deduction, or credit (or items thereof) arising in any year differently than as provided for in this Article X if, and to the extent, (i) that allocating income, gain, loss, deduction, or credit (or item thereof) would cause the determinations and allocations of each Member’s distributive share of income, gain, loss, deduction, or credit (or item thereof) not to be permitted by the Code and any Treasury Regulations promulgated thereunder, or (ii) inconsistent with a Member’s Interest in the Company taking into consideration all facts and circumstances. Any allocation made pursuant to this Section shall be deemed to be a complete substitute for any allocation otherwise provided for in this Agreement and no further amendment of this Agreement or approval by any Member shall be required to effectuate such allocation. In making such allocations under this Section (“New Allocations”), the Manager is authorized to act in reliance upon advice of counsel to the Company or the Company’s regular certified public accountants that, in its opinion after examining the relevant provisions of the Code and any current or future proposed or final Treasury Regulations thereunder, the New Allocation is necessary in order to ensure that, in either the then current year or in any preceding year, each Member’s distributive share of income, gain, loss, deduction, or credit (or items thereof) is determined and allocated in accordance with the Code and the Member’s Interest in the Company.

New Allocations made by the Manager in reliance upon the advice of counsel and accountants as described above shall be deemed to be made in the best interests of the Company and all of the Members consistent with the duties of the Manager hereunder, and any such New Allocation shall not give rise to any claim or cause of action by any Member or Economic Interest Holder against the Company or the Manager.

## ARTICLE XI BOOKS AND RECORDS

* 1. ***Accounting Period***. The Company’s accounting period shall be the Fiscal Year.
  2. ***Records and Reports***. At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the following records:

1. A current list of the full name and last known address of each Member, Economic Interest Owner, and Manager;
2. Copies of records to enable a Member to determine the relative voting rights, if any, of the Members;
3. A copy of the Articles of Organization of the Company and all amendments thereto;
4. Copies of the Company’s federal, state, and local income tax returns and reports, if any, for the three most recent years;
5. Copies of this Operating Agreement, together with any amendments thereto; and

years.

1. Copies of any financial statements of the Company for the three most recent

The books and records shall at all times be maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours.

* 1. ***Tax Returns***. The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company’s Fiscal Year.
  2. ***Reports*.** On a monthly basis, the Manager shall prepare for the Company and submit to the Members the following: (a) an unaudited balance sheet, (b) income statement, (c) cash flow statement, (d) interim leasing reports, (e) construction status reports, (f) an operations report, showing actual expenditures compared to those expenditures estimated in the budget.
  3. ***Annual Business Plan***. The Manager will provide to the Fund an Annual Business Plan that will review major strategy objectives for each existing Company asset in such areas as property operating performance, capital expenditures, leasing and financing/refinancing. It will include a competitive market update, and a one-year forecast of asset level performance. Such Annual Business Plan will also include a detailed, month-by-month plan for the ensuing year, as well as long-term projections that preview the impact of capital commitments, cash flows, refinancing needs, and key company/loan dates which will require action and similar variables. Each Annual Business Plan will be reviewed by the Fund and the Manager on a semi- annual basis and may be modified throughout the year as agreed by them. If the Manager proposes a sale or refinancing of the Project, it will provide to the Members all information necessary for it to evaluate such proposal.

## ARTICLE XII TRANSFERABILITY

### *General Prohibition*.

1. No Member may assign, convey, sell, transfer, liquidate, encumber, or in any way alienate (collectively a “Transfer”), all or any part of its Interest without the unanimous written consent of the Members. Any attempted Transfer of all or any portion of an Interest without the necessary consent, or as otherwise permitted hereunder, shall be null and void and shall have no effect whatsoever.
2. For purposes of this Section 12.1, transfers of direct or indirect interests in a Member shall be transfers subject to the restrictions of this Section; provided, however, that the a Member shall not unreasonably withhold its consent to any transfers made for bona fide and verifiable estate planning purposes.
   1. ***Conditions of Transfer and Assignment***. A transferee of an Interest shall become a Member only if the Manager consents in writing thereto as provided in Section 12.1 and the following conditions have been satisfied.
3. The transferor, its legal representative or authorized agent must have executed a written instrument of transfer of such Interest in form and substance satisfactory to the Manager;
4. The transferee must have executed a written agreement, in form and substance satisfactory to the Manager, to assume all of the duties and obligations of the transferor under this Operating Agreement with respect to the transferred Interest and to be bound by and subject to all of the terms and conditions of this Operating Agreement;
5. The transferor, its legal representative or authorized agent, and the transferee must have executed a written agreement, in form and substance satisfactory to the Manager, to indemnify and hold the Company, the Manager, and the Members harmless from and against any loss or liability arising out of the transfer;
6. The transferee must have executed such other documents and instruments as the Manager may deem necessary to effect the admission of the transferee as a Member; and
7. Unless waived by the Manager, the transferee or the transferor must have paid the expenses incurred by the Company in connection with the admission of the transferee to the Company.

A permitted transferee of an Interest who does not become a Member shall be an Economic Interest Owner only and shall be entitled only to the transferor’s Economic Interest to the extent assigned. Such transferee shall not be entitled to vote on any question regarding the company, and the Membership Interest associated with the transferred Economic Interest shall not be considered to be outstanding for voting purposes.

* 1. ***Successors as to Economic Rights.*** References in this Operating Agreement to Members shall also be deemed to constitute a reference to Economic Interest Owners where the provision relates to economic rights and obligations. By way of illustration and not limitation, such provisions would include those regarding Capital Accounts, distributions, allocation and contributions. A transferee shall succeed to the transferor’s Capital Contributions and Capital Account to the extent related to the Economic Interest transferred, regardless of whether such transferee becomes a Member.
  2. ***Right of First Refusal/Tag-Along/Approval Rights***. Subject to the provisions of Section 12.1 hereof, if any Member (a “Selling Member”) desires to accept an offer to transfer to a third-party purchaser all or any portion of its Membership Interest in the Company (the “Offered Interest”), such Selling Member shall deliver to all non-transferring Members (each, a “Non-Transferring Member”), written notice of the terms of such offer (a “Third Party Notice”),

which Third Party Notice shall identify the third party offering to purchase the Offered Interest. Within ten (10) days following the delivery of a Third Party Notice, the Non-Transferring Members, acting collectively by affirmative vote of those Non-Transferring Members owning a majority of the Membership Interests owned by all Non-Transferring Members, shall have the right to either (a) acquire from the Selling Member on a pro rata basis in accordance with their respective Membership Interests vis-à-vis all Non-Transferring Members, and upon the same terms as the Selling Member would accept from such third-party purchaser, the Offered Interest, or (b) require that the transferring party cause such third-party purchaser to also purchase from the Non-Transferring Members, upon the same proportional terms offered to the Selling Member, all of the Membership Interests owned by Non-Transferring Members.

### *Buy-Sell.*

1. At any time following the expiration of any restrictions or limitations set forth in third party agreements with the Company and 24 months after the date of the project’s substantial completion a Member (hereinafter called the “Offeror”) may serve upon the other Members (hereinafter called the “Offeree”) a notice (hereinafter called “Offering Notice”) which shall contain (i) a statement of intent to rely on this Section 12.5, and (ii) a valuation stating the aggregate dollar amount (hereinafter called “Specified Valuation Amount”) which the Offeror as a third party would be willing to pay for all of the assets owned by the Company (the “Company Assets”) as of that date free and clear of all liabilities. The offer shall be accompanied by an earnest money deposit of not less than the lesser of $200,000 or 2.5% of the Specified Valuation Amount (the “Earnest Money”).
2. The Offeree shall have the option (i) to sell its entire interest in the Company to the Offeror for an amount equal to the amount the Offeree would have been entitled to receive if the Company had sold the Company Assets for the Specified Valuation Amount on the closing date and the Company had immediately paid all Company liabilities and distributed the remaining net proceeds to each Member in satisfaction of its interest in the Company; or (ii) to purchase the entire interest in the Company of the Offeror for an amount equal to the amount the Offeror would have been entitled to receive if the Company had sold the Company Assets for the Specified Valuation Amount on the closing date and the Company had immediately paid all Company liabilities and distributed the remaining net proceeds to each Member in satisfaction of its interest in the Company.
3. The Offeree shall have sixty (60) days from the date of the Offering Notice to exercise either of the Offeree’s options referred to in Section 12.5(b) above. If the Offeree elects to purchase, then it will return the Offeror’s Earnest Money, together with an identical amount to be held by the Offeror as Earnest Money. If the Offeree shall not exercise either of such options within said sixty (60) day period, then, as of the day following the expiration of such period, the Offeree shall be conclusively deemed to have elected to sell its entire interest in the Company to the Offeror at the price provided in Section 12.5(b)(i).
4. The Member obligated to purchase under this Section 12.5 shall fix a closing date (the “Closing Date”) not later than 45 days following the date of the exercise or expiration of the options referred to in Section 12.5(b). The earnest money shall be applied to the purchase price

if the Offeror purchases, and refunded to it if the Offeree purchases. The closing shall take place on the Closing Date at the office of the Company.

1. At the closing on the Closing Date, the Party selling its interest in the Company (“Seller”) shall execute and deliver to the Purchaser (as hereinafter defined) any assignments of interest, bills of sale, instruments of conveyance and such other instruments as Purchaser may reasonably require, to give it good and clear record and marketable title to all of Seller’s right, title and interest in and to the Company and Seller hereby irrevocably constitutes and appoints Purchaser the attorney-in-fact for Seller to execute, acknowledge and deliver such instruments as may be reasonably necessary to carry out and enforce the provisions of this Section 12.5. At the closing, Purchaser shall execute and deliver to Seller an indemnity agreement pursuant to which Purchaser agrees to indemnify and hold harmless Seller from and against all losses, damages, claims, costs and expenses (including reasonable attorney’s fees) incurred or paid by Seller as a result of the failure of Purchaser to pay all debts and other liabilities of the Company arising from and after the Closing Date.
2. In addition to the foregoing, and as a condition of any purchase of a Membership Interest pursuant to this Section 12.5, the Purchaser shall use its best efforts to renegotiate all debts, loans, obligations, and liabilities of the Company, existing as of the date such Membership Interest is transferred, so as to fully and completely release the Seller from any personal liability for such debts, loans, obligations, and liabilities of the Company, including but not limited to any liabilities arising as a result of the transferring Party acting as a maker, co-maker, surety, or guarantor of such debts, loans, obligations or liabilities of the Company; the failure to actually obtain such release shall be deemed to be a failure of a condition precedent to closing the transaction contemplated by this Section 12.5.
3. If the Purchaser (the “**Defaulting Purchaser**”) fails to consummate the purchase of the Membership Interest of the Seller (the “**Non-Defaulting Seller**”) through no fault of the Non-Defaulting Seller, then the amounts placed in escrow by the Defaulting Purchaser shall be retained by the Non-Defaulting Seller as liquidated damages arising from the failure of the Defaulting Purchaser to consummate the transaction contemplated by this Section 12.5, and the Defaulting Party will forfeit its future right to initiate action under this Section 12.5.

## ARTICLE XIII

**ISSUANCE OF ADDITIONAL MEMBERSHIP INTERESTS**

Any Person approved by the Manager and all of the Members may become a Member in the Company by the issuance by the Company of Membership Interests of a Member for such consideration as determined by the Manager and approved by the Members in accordance with Section 6.4 above.

## ARTICLE XIV DISSOLUTION AND TERMINATION

### *Dissolution*.

events:

1. The Company shall be dissolved upon the earlier to occur of any of the following
   1. Unanimous vote of the Members; or
   2. sale of all or substantially all of the Company’s assets and the collection of all proceeds therefrom.

The occurrence of an Event of Dissociation (as defined in Section 14-11-601.1 of the Georgia Act) as to a Member will not cause the Company to be dissolved.

1. Any successor in interest of the member as to whom the Event of Dissociation occurs shall become an Economic Interest Owner but shall not be admitted as a Member, except in accordance with Article XII hereof.
2. A Member shall not voluntarily withdraw from the Company or take any other voluntary action which causes an Event of Dissociation.
3. Damages for breach of Section 14.1(c) shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by the Company to which the withdrawing Member would otherwise be entitled.
   1. ***Effect of Dissolution***. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Georgia Act. Upon dissolution, the Manager shall file a statement of commencement of winding up and publish the notice permitted by the Georgia Act.
   2. Winding-Up, Liquidation, and Distribution of Assets.
4. Upon dissolution, an accounting shall be made by the Company’s accountants of the accounts of the Company and of the Company’s assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Manager(s), or if none, the Persons or Persons selected by unanimous vote of the Members (the “Liquidators”) shall immediately proceed to wind up the affairs of the Company.

shall:

1. If the Company is dissolved and its affairs are to be wound up, the Liquidators
   1. Sell or otherwise liquidate all of the Company’s assets as promptly as practicable (except to the extent the Liquidators may determine to distribute any assets to the Members in kind);
   2. Allocate any profit or loss resulting from such sales to the Members in accordance with Article X hereof;
   3. Discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities or liabilities of the Company;
   4. Distribute the remaining assets to the Members, either in cash or in kind, (A) first, to the Members in accordance with the positive balance (if any) in each Member’s Capital Account (as determined after taking into account all Capital Account adjustments for the Company’s Fiscal Year during which the liquidation occurs), and (B) with any balance remaining after such distributions under (A) being distributed to the Members in proportion to the Members’ respective Membership Interest percentages. Any such distributions in respect to Capital Accounts shall, to the extent practicable, be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations; and
   5. If any assets of the Company are to be distributed in kind, the net fair market value of such assets shall be determined by independent appraisal or by agreement of the Members. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members shall be adjusted pursuant to the provisions of this Operating Agreement.
   6. Notwithstanding anything to the contrary in this Operating Agreement, upon a liquidation within the meaning of Section 1.704.1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations, and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Member’s Capital Account.
   7. Upon completion of the winding-up, liquidation, and distribution of the assets, the Company shall be deemed terminated.
   8. ***Certificate of Termination***. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, a certificate evidencing such termination may be executed and filed with the Secretary of State of Georgia in accordance with the Georgia Act.
   9. ***Return of Contribution Nonrecourse to Other Members***. Except as provided by law or as expressly provided in this Operating Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member’s Capital Account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Account of one or more Members, including, without limitation, all or any part of that Capital Account attributable to Capital Contributions, then such Member shall have no recourse against any other Member.

## ARTICLE XV MISCELLANEOUS PROVISIONS

* 1. ***Permits and Licenses***. Developer represents and warrants to the Fund that all permits, licenses and entitlements necessary and/or required to commence construction of the Project within 30 days of the date hereof have been obtained and are irrevocable.
  2. ***Application of Georgia Law***. This Operating Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the Georgia Act.
  3. ***No Action for Partition***. No Member has any right to maintain any action for partition with respect to the property of the Company.
  4. ***Execution of Additional Instruments***. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney, and other instruments necessary to comply with any laws, rules, or regulations.
  5. ***Construction***. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and shall be considered gender neutral.
  6. ***Headings***. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Operating Agreement or any provision hereof.
  7. ***Waivers***. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
  8. ***Rights and Remedies Cumulative***. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
  9. ***Exhibits***. All exhibits referred to in this Operating Agreement and attached hereto are incorporated herein by this reference.
  10. ***Heirs, Successors, and Assigns***. Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors, and assigns.
  11. ***Creditors***. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or by any Person not a party hereto.
  12. ***Counterparts***. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  13. ***Federal Income Tax Election; Tax Matters Partner***. All elections required or permitted to be made by the Company under the Code shall be made by the Manager. For all purposes permitted or required by the Code, the Manager is hereby constituted and appointed as Tax Matters Partner or, if it is no longer a Manager, then such other Member as shall be elected by the Members. The provisions on limitations of liability of the Manager and Members and indemnification set forth in Article V hereof shall be fully applicable to the Tax Matters Partner in his or its capacity as such. The Tax Matters Partner may resign at any time by giving written notice to the Company and each of the other Members. Upon the resignation of the Tax Matters Partner, a new Tax Matters Partner may be elected by the Members.
  14. ***Notices***. Any and all notices, offers, demands, or elections required or permitted to be made under this Operating Agreement (“Notices”) shall be in writing, signed by the party giving such Notice, and shall be deemed given and effective (i) when hand-delivered (either in person by the party giving such notice, or by its designated agent, or by commercial courier), or

1. on the third (3rd) business day (which term means a day when the United States Postal Service, or its legal successor (“Postal Service”) is making regular deliveries of mail on all of its regularly appointed week-day rounds in Atlanta, Georgia) following the day (as evidenced by proof of mailing) upon which such notice is deposited, postage pre-paid, certified mail, return receipt requested, with the Postal Service, and addressed to the other party at such party’s respective address as set forth on Exhibit A, or at such other address as the other party may hereafter designate by Notice.
   1. ***Certification of Non-Foreign Status***. In order to comply with Section 1446 of the Code and the applicable Treasury Regulations thereunder, in the event of the disposition by the Company of a United States real property interest as defined in the Code and Treasury Regulations, each Member shall provide to the Company an affidavit stating, under penalties of perjury, (i) the Member’s address, (ii) United States taxpayer identification number, and (iii) that the Member is not a foreign person as that term is defined in the Code and Treasury Regulations. Failure by any Member to provide such affidavit by the date of such disposition shall authorize the Manager to withhold the percentage of such Member’s distributive share of the amount realized by the Company required by Section 1446 of the Code.
   2. ***Amendments***. Any amendment to this Operating Agreement shall be approved by the Members where required by and in the manner provided in Section 6.4 hereof. After such approval by the Members, or in the event approval by the Members is not necessary under Section 6.4, each Member agrees to execute and deliver to the Company upon request by the Manager appropriate documentation to evidence each amendment. Notwithstanding the foregoing, the Manager shall, without a vote of the Members, amend the attached Exhibit A to reflect properly approved newly-established Membership Interests.
   3. ***Invalidity***. The invalidity or unenforceability of any particular provision of this Operating Agreement shall not affect the other provisions hereof, and the Operating Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. If

any particular provision herein is construed to be in conflict with the provisions of the Georgia Act, the provisions of this Operating Agreement shall control to the fullest extent permitted by applicable law. Any provision found to be invalid or unenforceable shall not affect or invalidate the other provisions hereof, and this Operating Agreement shall be construed in all respects as if such conflicting provision were omitted.

* 1. ***Arbitration***. Any dispute, controversy, or claim arising out of or in connection with, or relating to, this Operating Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Atlanta, State of Georgia, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence, and counsel’s fees, except that in the discretion of the arbitrator, any award may include the cost of a party’s counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy, or claim to be submitted to arbitration as a dilatory tactic.
  2. ***Determination of Matters Not Provided for in this Operating Agreement***. The Manager shall decide any and all questions arising with respect to the Company and this Operating Agreement which are not specifically or expressly provided for in this Operating Agreement.
  3. ***Further Assurances***. Each Member agrees to cooperate, and to execute and deliver in a timely fashion any and all additional documents necessary to effectuate the purposes of the Company and this Operating Agreement.
  4. ***No Partnership Intended for Non-Tax Purposes***. The Members have formed the Company under the Georgia Act, and expressly disavow any intention to form a partnership under Georgia’s Uniform Partnership Act, Georgia’s Uniform Limited Partnership Act, or the partnership act or laws of any other state. The Members do not intend to be partners one to another or partners as to any third party. To the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.
  5. ***Time***. Time is of the essence of this Operating Agreement, and to any payments, allocations, and distributions provided for under this Operating Agreement.
  6. ***Definitions***. The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

***“Adjusted Capital Account Deficit”*** means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Period, after giving effect to the following adjustments:

* + 1. Credit to such Capital Account any amounts that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g) and 1.704-2(i)(5);
    2. Debit to such Capital Account the items described in Sections 1.704- 1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

***“Affiliate.”*** With respect to any Person (i) in the case of an individual, any relative of such Person; (ii) any officer, director, trustee, partner, member, employee or holder of ten percent (10%) or more of any class of the voting securities of or equity interest in such Person;

1. any corporation, partnership, limited liability company, trust, or other entity controlling, controlled by, or under common control with such Person; or (iv) any officer, director, trustee, partner, member, employee or holder of ten percent (10%) or more of the outstanding voting securities of any corporation, partnership, limited liability company, trust, or other entity controlling, controlled by, or under common control with such Person.

***“Annual Business Plan.”*** An annual business plan prepared by the Manager with respect to the Project pursuant to Section 11.5 hereof.

***“Articles of Organization.”*** The Articles of Organization of Developer Project, LLC, as filed with the Secretary of State of Georgia, as the same may be amended from time to time.

***“Capital Account.”*** A capital account maintained in accordance with the rules contained in Section 1.704-1(b)(2)(iv) of the Regulations, as amended from time to time. A separate Capital Account will be maintained for each Member.

***“Capital Budget.”*** Each annual budget for capital requirements for the Company or the Project.

***“Capital Contribution.”*** Any contribution to the capital of the Company in cash or property by a Member whenever made.

***“Capital Transaction.”*** Any sale, financing, refinancing, total or partial destruction, condemnation, or other recapitalization or disposition of any substantial asset of the Company, whether directly or indirectly owned.

***“Code.”*** The Internal Revenue Code of 1986, as amended from time to time. ***“Company.”*** Developer Project, LLC, a Georgia limited liability company. ***“Construction Manager/General Contractor.”*** The construction manager or general

contractor for the Project.

***“Developer.”*** Developer Entity, LLC, a Georgia limited liability company.

***“Development Agreement.”*** That certain Development Agreement between the Project Entity and Developer Entity, LLC, dated , 2017, concerning the development of the Project.

***“Development Budget.”*** The budget for the initial acquisition, development, construction, marketing, and financing of the Project.

***“Development Plan.”*** The plan for the initial acquisition, development, construction, marketing, and financing of the Project.

***“Distributable Cash.”*** All cash, revenues and funds received as a result of the Company’s operations, less the sum of the following to the extent paid or set aside by the Company; (i) all principal and interest payments on indebtedness of the Company and all other sums paid to lenders (other than any Default Loan Return, return of Default Loan, Shortfall Loan Return or return of Shortfall Loan); (ii) all cash expenditures incurred incident to the normal operation of the Company’s business, including properly authorized salaries or wages paid to Members, Officers, and employees of the Company; and (iii) such reserves as the Manager and the Fund deem reasonably necessary to the proper operation of the Company’s business.

***“Economic Interest.”*** An Economic Interest Owner’s share of one or more of the Company’s Net Profits, Net Losses, and rights to distributions of the Company’s assets pursuant to this Operating Agreement and the Georgia Act, but shall not include any right to vote on, consent to, or otherwise participate in any decision of the Members. For the purposes hereof, any transfer of all or any part of a Membership Interest by a Member pursuant to Sections 12.4 and 12.5 hereof shall be deemed to include the transfer of a proportionate share of any Economic Interest associated with such Membership Interest.

***“Economic Interest Owner.”*** The owner of an Economic Interest who is not a Member. For the purposes hereof, any transfer of all or any part of a Membership Interest by a Member pursuant to Section 12.4 and 12.5 hereof shall be deemed to include the transfer of a proportionate share of any Economic Interest associated with such Membership Interest.

***“Entity.”*** Any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association, or any foreign trust or foreign business organization.

***“Event of Dissociation.”*** An event defined in Section 14.1.

***“Fiscal Year.”*** The Company’s fiscal year, which shall be the calendar year.

*et seq.*

***“Georgia Act.”*** The Georgia Limited Liability Company Act at O.C.G.A. § 14-11-100,

***“Initial Capital Contribution.”*** The initial contribution to the capital of the Company made by a Member pursuant to this Operating Agreement.

***“Interest.”*** Any interest in the Company, including a Membership Interest, any right to vote or participate in the business of the Company or any other interest in the Company.

***“Investment Fee.”*** An Investment Fee of two percent (2%) of the equity investment made by the Fund shall be payable to Mill Green Partners, LLC upon closing of the Construction Loan.

***“Manager.”*** Each Manager designated pursuant to this Operating Agreement. Specifically, Manager shall mean Developer Entity, LLC or any other Person(s) that succeed such Person in the capacity as Manager or that are elected as an additional Manager. A Manager need not be a resident of the State of Georgia, but shall be a Member of the Company.

***“Member.”*** Each Person who executes this Operating Agreement or a counterpart thereof as a Member, and each of the Persons who may hereafter become Members, as provided in this Operating Agreement. If a Person is a Member immediately prior to the purchase or other acquisition by such Person of an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Interest.

***“Membership Interest.”*** The interest in the Company owned by a Member which shall include such Member’s shares of one or more of the Company’s Net Profit, Net Loss, Capital Accounts and distributions of Company assets and the right to vote on, consent to, or otherwise participate in any action of or by the Members granted pursuant to this Operating Agreement or the Georgia Act. For purposes of the provisions hereof relating to actions taken or approval by Members, including voting, written consents or other approval, only Membership Interests shall be taken into account.

***“Net Profits” and “Net Losses.”*** The Company’s taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) will be included in taxable income or loss); provided, such Net Profits and Net Losses will be computed as if items of tax-exempt income and non-deductible, non-capital expenditures (under Code Sections 705(a)(1)(B) and 705(a)(2)(B)) were included in the computation of taxable income or loss. If any Member contributes property to the Company with an initial book value to the Company different from its adjusted basis for federal income tax purposes to the Company, or if Company property is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Regulations or as otherwise required by the Regulations, Net Profits, and Net Losses will be computed as if the initial adjusted basis for federal income tax purposes to the Company of such contributed or revalued property equaled its initial book value to the Company as of the date of contribution or revaluation. Credits or debits to Capital Accounts due to a revaluation of Company assets in accordance with Section 1.704-1(b)(2)(iv)(f) of the Regulations, or due to a distribution of non-cash assets, will be taken into account as gain or loss from the disposition of such assets for purposes of Article X hereof.

***“Officer.”*** One or more individuals appointed by the Manager to whom the Manager delegates specified responsibilities. The Manager may, but shall not be required to, create such offices as it deems appropriate, including, but not limited to, President, Executive Vice President, Senior Vice Presidents, Vice Presidents, Secretary, and Treasurer. The Officers shall have such duties as are assigned to them by the Manager from time to time. All Officers shall serve at the pleasure of the Manager and the Manager may remove any Officer from office without cause and any Officer may resign at any time.

***“Operating Agreement.”*** This Operating Agreement of the Company as originally executed and as amended from time to time.

***“Operating Budget.”*** Each annual budget for the operation of the Company, the Project or the Project Entity.

***“Person.”*** Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “*Person”* where the context so permits.

***“Project.”*** A development called “ ” a multifamily development located in .

***“Project Entity.”*** , LLC, a Georgia limited liability company.

***“Property.”*** Means the land more particularly described in Exhibit B attached hereto together with all improvements from time to time thereon and all personal property owned by the Company and used in connection with the ownership or operation thereof.

***“Property Manager.”*** The property manager for the Project.

***“Related Party.”*** Means with respect to any Person, (i) any Person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such Person, (ii) any Person who is a member of the immediate family of such Person, or (iii) any Person in which such Person or one or more members of the immediate family of such Person has a five percent (5%) or more beneficial interest (whether an initial, residual or contingent interest) or as to which such Person serves as a trustee or general partner or in a similar fiduciary capacity. A Person shall be deemed to control a Person if it and/or any member of the immediate family of such Person owns, directly or indirectly, at least five percent (5%) of the beneficial interest in such Person (whether an initial, residual or contingent interest) or otherwise has the power to direct the management, operations or business of such Person. The term "beneficial owner" is to be determined in accordance with Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934. Notwithstanding the foregoing, (y) a subsidiary shall not be considered a Related Party of any Person solely on account of such Person's ownership interest in the Company, and (z) the Fund shall not be deemed a Related Party.

***“Reserves.”*** Funds set aside and amounts allocated to reserves in amounts determined by the Manager (with consent of the Fund) for working capital and to pay taxes, insurance, debt service, or other costs or expenses incident to the ownership or operation of the Company’s business.

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

## ARTICLE XVI MEMBER LOAN PROVISION

* 1. Purpose. The Company business and purpose shall consist solely of the ownership, development, operation and maintenance of real property located in County, for the construction of a multifamily project (the “Property”) and activities incidental thereto.
  2. Powers and Duties. Notwithstanding any other provisions of this Agreement or any provision of law that otherwise so empowers the Company and so long as any obligations with respect to that certain loan from Mezzanine Loan Entity, LLC (“Member Lender”) to the Member (the “Member Loan”) remain outstanding and not discharged in full, without the consent of all Members, the Company shall have no authority on behalf of the Company to:

1. incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Mortgage Loan (as defined in the Member Loan Agreement evidencing the Member Loan (as modified and amended from time to time, the "Member Loan Agreement")), except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding amount of the Member Loan;
2. seek the dissolution or winding up, in whole or in part, of the Company;
3. merge into or consolidate with any person or entity or dissolve, terminate or liquidate, in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
4. file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action; or
5. amend, modify or alter Section 16.

Notwithstanding the foregoing and so long as any portion of the Member Loan remains outstanding and not discharged in full, the Company shall have no authority to take any action in items (i) through (iii) and (v) without the written consent of the Member Lender.

* 1. Title to Company Property. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member’s interest in the Company shall be personal property for all purposes.
  2. Separateness/Operations Matters. The Company has not and shall not until such time as the Member Loan is paid in full:

1. own any asset other than the Property;
2. engage in any business other than the ownership and operation of the Property;
3. have any subsidiaries (whether the same would constitute an entity that could be consolidated on any of such Person’s financial statements or a minority interest);
4. enter into any contract or agreement with any partner, member, shareholder, principal or affiliate of the Company, Member or any affiliate of any such partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;
5. make any loans or advances to any third party;
6. fail to remain solvent or fail to pay its debts and liabilities (including, without limitation, employment and overhead expenses) from its own assets as the same shall become due;
7. fail to do all things necessary to observe limited liability company formalities, or fail to preserve its existence, and will not, nor will any Member thereof amend, modify or otherwise change this Agreement or other organizational documents except as expressly permitted under the Member Loan Agreement;
8. fail to conduct or operate its business as presently conducted and operated;
9. fail to maintain books and records and bank accounts (if any) separate from those of its affiliates, including its members;
10. fail to, at all times, hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate thereof, including any partner, member, shareholder or any affiliate of any partner, member or shareholder of the Company or Member);
11. fail to file its own separate tax returns or if such returns are filed jointly, such Persons shall be reflected as separate entities thereon;
12. fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
13. fail to, nor shall any member, partner, shareholder or affiliate, seek the dissolution or winding up, in whole or in part, of the Company;
14. enter into any transaction of merger, consolidation or other business combination, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;
15. commingle the funds and other assets of the Company with those of any partner, member, shareholder, any affiliate or any other Person;
16. fail to maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other Person;
17. hold itself out to be responsible for the debts or obligations of any other Person; and
18. fail to comply with the provisions of this Agreement or its Articles of Organization.
    1. Effect of Bankruptcy, Death or Incompetency of a Member. The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any Company interest shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.
    2. Subordination of Indemnification Provisions. Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under this Agreement or the Articles of Organization of the Company or the laws of the state of organization of the Company shall be fully subordinate to any obligations of the Member arising under the documents evidencing, securing or otherwise relating to the Member Loan (the “Member Loan Documents”), and shall only constitute a claim against the Company to the extent of, and shall be paid by the Company in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Member Loan Documents, provided, however, that in no event shall any such indemnification obligations or claims against the Company continue or remain in effect following the date that the Membership Interests are transferred or assigned to Member Lender, its nominee or assignee or any purchaser in connection with the exercise of remedies under the Member Loan Documents, including, without limitation, a foreclosure upon the Member’s Membership Interest, assignment in lieu of foreclosure or other similar transaction.
    3. Member Loans. The Member and its manager acknowledge and agree that so long as any portion of the Member Loan remains outstanding, neither Member nor its manager shall make or cause to be made any loans from Member or its manager to the Company.
    4. Character of Member’s Interest; Endorsement of Member’s Interest. All right, title, interest and claims or rights of Member now or hereafter acquired as a member of the Company, including, without limitation, all rights and interests of Member under this Agreement (collectively, the “Membership Interest”) is and shall be personal property for all purposes and shall be a “security” as defined in, and governed by, Article 8 of the Uniform Commercial Code of the State of Georgia (O.C.G.A. Section 11-8-101 et seq.) (the “UCC”). Member shall receive a certificate substantially in the form of Exhibit A attached hereto, which shall evidence Member’s Membership Interest in the Company. In addition, at the request of Member, such certificate shall reflect that Member’s Membership Interest in the Company has been pledged as collateral for the Member Loan. Such certificate shall expressly provide that the Member’s Membership Interest is a security as defined in, and governed by, said Article 8, that the transfer of such Membership Interest can be registered as provided in Section 8-102(a)(13) of the UCC) and that the Membership Interest is divisible into a class or series of interests or obligations. No Member will amend this Agreement or any other formation, governing or organizational document of Company to provide that any Member’s Membership Interests in Company are not securities governed by Article 8 of the UCC or to otherwise “opt out” of Article 8 of the UCC. None of the provisions of this Agreement or any other formation, governing or organizational document of Company may be amended in any way to provide for or permit Company to issue uncertificated Membership Interests without the prior written consent of Member Lender.
    5. Membership Units; Membership Interests. The Member has received 100 membership units in the Company, representing one hundred percent (100%) of the Membership Interests in the Company.
    6. Admission of Additional Members. For so long as (and only as long as) the Member Loan remains outstanding or Member Lender has any obligation to make any loans or advances under the Member Loan Documents, the Member shall be the sole Member of the Company and shall not admit additional members to the Company.
    7. Admission of Substitute Members.
19. Except as otherwise provided in Section 16.11 (b) below and notwithstanding anything contained in this Agreement or in the definition of “Member”, (i) any successful bidder at a foreclosure sale pertaining to the Member’s Membership Interest in the Company conducted in connection with a default under the Member Loan Documents, or (ii) any transferee of the Member’s Membership Interest in the Company that receives such interest in lieu of foreclosure, shall become, without any additional or further action on the part of any Person, a substitute Member of the Company, with all the rights, powers and privileges of the Member; provided, however, such substitute Member shall not be liable for the Member’s obligation to make any contributions due prior to the date such Person became a substitute Member. Without limiting or affecting any provision of this Agreement or any other formation, governing or organizational document of the Company, any Person that becomes a Member of the Company shall be deemed to have approved the admission of any successful bidder at a

foreclosure sale of the Member’s Membership Interest or transferee in lieu thereof as a Member of the Company with all rights, powers and privileges of a Member.

1. For so long as (and only as long as) the Member Loan remains outstanding or Member Lender has any obligation to make any loans or advances under the Member Loan Documents, the Member shall not assign, pledge, convey, sell, transfer, encumber, grant a security interest or otherwise dispose, directly or indirectly the Member’s Membership Interest in the Company to any other Person; provided, however, that the Member’s Membership Interest in the Company may be pledged to Member Lender, as security for the obligations under the Member Loan Documents and transferred or assigned to Member Lender, its nominee or assignee or any purchaser in connection with the exercise of remedies under the Member Loan Documents, including, without limitation, a foreclosure upon the Member’s Membership Interest, assignment in lieu of foreclosure or other similar transaction.
   1. Interest Held for Investment. The Member does hereby represent and warrant by the execution of this Agreement that its interest in the Company was obtained for investment purposes only and not for resale or distribution. The Member and the Company hereby acknowledge that the Member’s Membership Interest in the Company has been (or will be) pledged to Member Lender as collateral for the Member Loan. The pledge of the Member’s Membership Interest for such purpose shall not constitute a “distribution.”
   2. Securities Laws Restrictions. The Membership Interests described in this Agreement have not been registered under the Securities Act of 1933, as amended, or under the securities laws of the State of Georgia or any other jurisdiction. Consequently, these interests may not be sold, transferred, assigned, pledged, hypothecated or otherwise disposed of, except in accordance with the provisions of such laws and this Agreement. By executing this Agreement, the Member represents and acknowledges that it is acquiring its Membership Interest for investment purposes only and without a view to distribution.
   3. Waiver of Certain Provisions. The Member and Manager acknowledge and agree that so long as any obligation under the Member Loan Documents remain outstanding, (a) the provisions set forth in Section 10 of the Agreement shall not apply to, and are hereby waived as to, (i) the pledge by Member of Member’s Membership Interest in the Company to Member Lender and any exercise of remedies by Member Lender under the Member Loan Documents, including, without limitation, any foreclosure or transfer in lieu thereof, and (ii) the granting of a purchase option by the Company in favor of Member Lender pursuant to that certain Purchase Option Agreement dated as of even date herewith between the Company and Member Lender, and any acquisition of the Property by Member Lender pursuant thereto, and (b) the provisions of Section 14.13 shall in no event govern any dispute between Member Lender and Company or Member. *(Signatures on Next Page)*

IN WITNESS WHEREOF, this Agreement is hereby executed under seal, effective

, 2017.

## MANAGER:

Developer Entity, LLC

By: Developer Entity, LLC, a

Georgia limited liability company, its Manager

By: (SEAL)

Name:

Title: Co-Operating Manager

By: (SEAL)

Name:

Title: Co-Operating Manager

## MEMBER:

Developer Entity, LLC

By: Developer Entity, LLC, a

Georgia limited liability company, its Manager

By: (SEAL)

Name:

Title: Co-Operating Manager

By: (SEAL)

Name:

Title: Co-Operating Manager

(Signatures Continued on Following Page)

## MEMBER:

MILL GREEN OPPORTUNITY FUND IV, a

Delaware limited liability company (the “FUND”)

By: MILL GREEN PARTNERS, LLC, a Delaware

limited liability company, its Sole Managing Member

By: Manager

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## EXHIBIT A

**to the**

**Form of Development Company Operating Agreement**

**Members’ Names, Addresses, Membership Interests, and Initial Capital Contributions**

|  |  |  |  |
| --- | --- | --- | --- |
| **NAME AND ADDRESS** | **INITIAL MEMBERSHIP INTEREST** | **INITIAL MEMBERSHIP INTEREST FOR VOTING RIGHTS** | **INITIAL CAPITAL CONTRIBUTION** |
| Developer Entity, LLC Developer’s address | 10% | 50% | $ |
| MILL GREEN OPPORTUNITY FUND IV  3284 Northside Parkway, N.W.  Suite 300  Atlanta, Georgia 30327 | 90% | 50% | $ |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**EXHIBIT B**

**The Property**

LEGAL DESCRIPTION - OVERALL SITE

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