

**OPERATING AGREEMENT  
OF  
RENTDUE CAPITAL FUND 2 LLC**

**A WYOMING LIMITED LIABILITY COMPANY**

**OPERATING AGREEMENT  
OF  
RENTDUE CAPITAL FUND 2 LLC  
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**OPERATING AGREEMENT  
OF  
RENTDUE CAPITAL FUND 2 LLC**

This Operating Agreement (*Agreement*) of RENTDUE Capital Fund 2 LLC, a Wyoming limited liability company (*Fund*), is made by the Members to provide for the governance and operations of the Fund and the rights and obligations of each Member regarding the Fund. This Agreement is effective on the date of the last signature of any party to this Agreement (including any Managers) and will apply to any Additional Members admitted in accordance with its terms. In consideration of the mutual promises in this Agreement, the parties to this Agreement agree to be legally bound by its terms.

**1.**

**ORGANIZATIONAL MATTERS**

**1.1. Fund Formation**

The Fund became a limited liability company under the laws of the State of Wyoming, and specifically under the Wyoming Limited Liability Company Act, upon filing the Certificate of Formation as required by the Secretary of State.

**1.2. Fund's Name**

The Fund's name is RENTDUE Capital Fund 2 LLC. The Manager may change the name of the Fund, subject to the terms of this Agreement and Applicable Law.

**1.3. Fund's Purpose**

The Fund's purpose is to engage in any lawful act or activity for which limited liability companies may be formed under the Act and all activities necessary or incidental to that purpose. The Fund has all the powers necessary or convenient to carry out its purposes, including the powers granted by the Act.

**1.4. Fund's Principal Office and Location of Records**

The street address of the principal office in the United States where the Fund maintains its records is 1611 E 2450 S B2, St George, UT 84790.

**1.5. Agent for Service of Process and Office**

The Fund's initial Agent for Service of Process is Registered Agents Inc, located at 30 N Gould St Ste R, Sheridan, WY 82801.



## **1.6. Fund's Term**

The Fund's duration is perpetual. The Fund began on the date the Wyoming was filed with the Wyoming Secretary of State and will continue until terminated or dissolved as provided in this Agreement.

## **1.7. No Partnership Intended for Non-Tax Purposes**

The Members have formed the Fund as a limited liability company under the Act and do not intend to form a partnership under any partnership or limited partnership act. The Members do not intend to be partners with each other or with any Third Party other than for federal and state income tax purposes. If any Member represents to another person that the Member or any other Member is a partner or that the Fund is a partnership, the Member making the wrongful representation will be liable to any other Member who incurs personal liability because of the erroneous representation.

## **2.**

### **TAX MATTERS**

#### **2.1. Taxation as a Partnership**

The Members intend to establish an entity that is subject to federal and state income taxation as a partnership. Unless the Voting Members elect not to be treated as a partnership for federal income tax purposes, the federal income tax basis of a Member's Units and all other matters relating to the distributive share and taxation of items of income, gain, loss, deduction, depreciation, and credit will be as established by Code Subchapter K.

#### **2.2. Fund Representative**

The Fund must designate a representative with a substantial presence in the United States to serve as the Fund representative within the meaning of Code Section 6223 (*Fund Representative*). The Fund Representative has the sole authority to act on behalf of the Fund in connection with Internal Revenue Service audits and adjustments. The Manager shall promptly appoint a Voting Member, or itself, to serve as Fund Representative in accordance with Code requirements.

##### **(a) Obligations and Discretion as to Tax Matters**

The Fund Representative shall notify all of the Members upon receipt of any notice regarding any examination by any federal, state, or local authority about the Fund's tax compliance. The Fund Representative may:

- determine whether to contest any proceedings, how to pursue any proceedings, and whether and on what terms to settle any dispute with the Internal Revenue Service;
- determine whether to elect out of partnership-level treatment under Code Section 6221(b) and Section 2.03;
- select the forum for any tax disputes involving the Fund; and

extend the statute of limitations for assessing tax deficiencies against the Members with respect to adjustments to the Fund's federal, state, local, or foreign tax returns.

**(b)Fund Representative to Preserve Tax Classification**

Unless the Manager elects for the Fund to not to be treated as a partnership for federal income tax purposes, the Fund Representative shall take all reasonable steps necessary to classify the Fund as a partnership for tax purposes under the Code and Treasury Regulations. The Fund Representative shall prepare and file any forms necessary or appropriate to classify the Fund as a partnership for tax purposes under the laws of any jurisdiction in which the Fund transacts business.

**2.3. Election under Code Section 6221(b)**

The Fund may elect for Code Section 6221(b) to apply for any taxable year that the Fund meets the requirements to elect out of Fund-level treatment under Code Section 6221(b). The election must be made with a timely filed return for that taxable year. The election must include the name and taxpayer identification number of each Member. The Fund must notify each Member of the election in the manner prescribed by the Secretary of Treasury.

**2.4. Consistent Treatment**

Each Member shall, on the Member's income tax return, treat each item of income, gain, loss, deduction, or credit attributable to the Fund in a manner consistent with the treatment of the income, gain, loss, deduction, or credit on the Fund income tax return.

**2.5. Adjustment in Future Tax Years**

If any tax proceeding results in adjustment in the amount of any item of income, gain, loss, deduction, or credit of the Fund—or any Member's distributive share thereof—for a prior year, the Fund may take corrective action. If the Fund elects to apply Code Section 6226 within 45 days from the date of the notice of final partnership adjustment, the Fund may issue the statement described in Code Section 6226(a)(2) to the Internal Revenue Service and to each Member that held an interest in the year in question. The statement must describe the Member's share of any adjustment to income, gain, loss, deduction, or credit (as determined in the notice of final partnership adjustment issued by the Internal Revenue Service). Upon receipt of the statement, each Member must take the adjustments described on the statement into account as provided in Code Section 6226(b).

Alternatively, the Fund may require each Member that held an interest in the Fund during the prior year to file an amended tax return reporting the Member's distributive share of the tax adjustments and to pay any taxes resulting from the adjustments in accordance with Code Section 6225(c). Each Member must submit the amended returns and pay all related taxes not later than 270 days from the date on which the notice of a proposed partnership adjustment is mailed to the Fund.

This Section and the Member's obligations under Section 2.04 survive the Fund's termination, dissolution, liquidation, and winding up and the Member's withdrawal from the Fund or transfer of its Units.

## **2.6. Tax Elections**

The Manager has the authority to make all Fund elections for federal, state, and local income tax matters permitted under the Code as provided in Section 10.03. Each Member consents to any election and shall sign any documentation necessary to give effect to any elections.

## **2.7. Changing Tax Classification**

Any decision to change the tax classification of the Fund from partnership to a corporation requires approval in accordance with Section 10.03.

## **2.8. Legal and Accounting Costs for Tax Matters**

The Fund shall pay all legal and accounting costs associated with any Internal Revenue Service proceeding regarding the Fund's tax returns.

# **3.**

## **MEMBERS' UNITS**

### **3.1. Members' Interests in the Fund**

The Members' interests in the Company are represented by Interests, which may be divided into Voting and Non-Voting Interests as designated by their different Classes. Members may own Units in Classes with Voting rights, Units in Classes with Non-Voting rights, or both. Except as otherwise provided in this Agreement, Classes of Membership Interests have the same rights and obligations concerning ownership rights, but different rights and obligations concerning voting rights, liquidation, and distribution rights.

### **3.2. Schedule of Members**

The Manager shall maintain a schedule of all Members and the amount and series of Units held by them (*Schedule of Members*). The Manager shall update the Schedule of Members upon the issuance or transfer of any Units to any new or existing Member. Should any Member request a copy of an updated Schedule of Members, in the interest of Member privacy, any identifying information and amounts shall be redacted by Manager except for the requesting Member.

### **3.3. Authorization and Issuance of Common Units**

Subject to compliance with Article Fourteen, the Fund may issue a class of Units designated as Common Units. The Schedule of Members lists the number of Common Units held by each current Common Member opposite each Common Member's name.

### **3.4. Other Issuances**

Subject to compliance with Article Fourteen, the Fund is authorized to authorize and issue or sell to any person any new type, class, or series of Units not otherwise described in this Agreement, which may be designated as classes or series of the Common Units or Preferred Units but with different rights.

### **3.5. Units Certification**

The Fund may, but is not required to, issue certificates to the Members representing the Units held by each Member. If the Fund issues certificates representing a Member's Units in accordance with this Section, then in addition to any other disclosure, legend, or information required by Applicable Law, all certificates representing issued and outstanding Units must include a Securities Law Disclosure substantially in the following form:

THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE OPERATING AGREEMENT AMONG THE COMPANY AND ITS MEMBERS, A COPY OF WHICH IS ON FILE AT THE COMPANY'S PRINCIPAL OFFICE. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, OR OTHER DISPOSITION OF THE UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THE OPERATING AGREEMENT.

THE UNITS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED, OR OTHERWISE DISPOSED OF EXCEPT UNDER A REGISTRATION STATEMENT EFFECTIVE UNDER SUCH ACT AND LAWS OR UNDER AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT.

Should the Fund elect not to issue certificates, Members may consider their signed Subscription Agreement and acknowledgment from the Manager as a representation of the Member's Units.

### **3.6. Valuing Fund and Units**

For all purposes of this Agreement, the value of the Fund as an entity and of Units will be their respective Fair Market Values. Any dispute, contest, or issue of Fair Market Value will be resolved by a written Qualified Appraisal by a Qualified Appraiser selected in accordance with Section 18.12.

### **3.7. Admitting New Members**

Subject to the requirements of Article Fourteen, Additional Members may be admitted when the Fund issues new Units or a Member transfers its Units. Upon compliance with Article Fourteen,

a person will be admitted as an Additional Member, listed as such on the Fund's books, and issued the Units. The Manager shall adjust the Capital Accounts of the Members as necessary under Article Five.

The Manager may adopt and revise rules, conventions, and procedures as the Manager determines appropriate regarding the admission of Additional Members to reflect the Units at the end of the calendar year in accordance with the Members' intentions. The Manager will make a concerted effort to not dilute the interests of Members without disclosure.

### **3.8. Transferability of Units**

The transferability of each Member's Units is restricted by Article Fourteen.

## **4.**

### **CAPITALIZATION**

#### **4.1. Initial Capital Contributions**

As their initial Capital Contributions to the Fund, the Members will contribute all of their right, title, and interest in and to the property described on the Schedule of Members or each Member's Subscription Agreement.

After any Member makes a Capital Contribution, the Fund shall promptly file one or more documents in its records showing that the Member has made the Capital Contribution. These documents may include photocopies of cancelled checks, documentary evidence of bank transfers, or photocopies of executed bills of assignment.

## **5.**

### **CAPITAL ACCOUNTS**

#### **5.1. Establishing and Maintaining Capital Accounts**

A Capital Account will be established for each Member and will be maintained at all times during the Fund's existence in compliance with the Code and Treasury Regulations. Each Member's Capital Account will be created with an initial credit equal to the cash contributed by the Member in exchange for the Member's interest in the amount described on the Subscription Agreement or Schedule of Members. Each Capital Account will be maintained according to the following provisions.

##### **(a) Credits to Member's Capital Account**

Each Member's Capital Account will be credited with the cash contributed, the Member's distributive share of profits, and the amount of any Fund liabilities that are assumed by the Member.

### **(b) Debits to Member's Capital Account**

Each Member's Capital Account will be debited the amount of cash, the Member's share of losses, and the amount of any liabilities of the Member that are secured by any property contributed by the Member to the Fund.

### **5.2. No Interest or Return of Capital**

Despite any other provision of this Agreement, no Member is entitled to any interest on its Capital Account or Units or on the Member's Capital Contribution. No Member may demand or receive the return of all or any portion of the Member's Capital Account, Units, or Capital Contribution.

### **5.3. Power to Modify Capital Account Provisions**

If, in the Manager's reasonable judgment, the modification is not likely to have a material effect on the amounts distributable to any Member under this Agreement, the Manager may modify the way the Capital Accounts are computed to comply with Treasury Regulation Section 1.704-1(b). The Manager shall make all necessary and appropriate adjustments to maintain equality between the Members' Capital Accounts and the amount of Fund Capital reflected on the Fund's balance sheet as computed for book purposes under Treasury Regulation Section 1.704-1(b)(2)(iv)(g), relating to adjustments to Book Value.

### **5.4. Negative Capital Accounts**

If the Fund or a Member's Units are liquidated, no Member will be required to restore a deficit in his or her Capital Account.

### **5.5. Assignment of Capital Account**

Except as otherwise required by the Code or Treasury Regulations, if any Units are assigned or treated as having been assigned under this Agreement, the Assignee will be treated as having made all of the Capital Contributions and as having received all of the distributions of the Assignor. The Assignee will succeed to the Capital Account of the Assignor to the extent that it relates to the assigned Units.

### **5.6. Treatment of Loans from Members**

Loans by any Member to the Fund are not Capital Contributions and do not affect the maintenance of the Member's Capital Account.

## **6.**

### **ALLOCATIONS**

### **6.1. Targeted Allocation of Net Income and Net Losses**

Net profits and net losses shall be allocated among the Members as follows: For each Taxable Year of the Fund, the Fund shall adjust each Member's Capital Account for all Capital Contributions and distributions during the Taxable Year and all other necessary allocations with

respect to the Taxable Year. After making such adjustments, the Fund shall allocate all net profits and net losses (and, if necessary, individual items of gross income or loss) to the Members' Capital Accounts in a manner such that, to the extent possible, the capital account balance of each Member at the end of the Taxable Year equals to the excess of:

- The amount that would be distributed to such Member if (a) the Fund were to sell the assets of the Fund for their Fair Market Value, (b) all Fund liabilities were settled in cash according to their terms (limited, with respect to each nonrecourse liability, to the Book Values of the assets securing such liability), and (c) the net proceeds thereof were distributed in full pursuant to Article Seven, over
- The sum of: (a) the amount, if any, without duplication, that such Member would be obligated to contribute to the capital of the Fund; (b) such Member's share of Fund Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(g); and (c) such Member's share of Member Nonrecourse Debt Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5), all computed as of the date of the hypothetical sale described above.

## **6.2. Determining Net Profits and Net Losses**

For purposes of this Article, the terms *net profits* and *net losses* mean the amount of the Fund's taxable income or loss for any year or period, determined under Code Section 703(a). All items of income, gain, loss, or deduction required to be stated separately under Section 703(a)(1) will be included in taxable income or loss. This determination of net profits and net losses includes the following items:

- any income of the Fund that is exempt from federal income tax and is not otherwise taken into account in computing taxable income or loss under this Article;
- any expenditures of the Fund described in Code Section 705(a)(2)(B) relating to nondeductible expenses that are not otherwise taken into account in computing taxable income or loss, and
- if any Fund asset's value is adjusted, the amount of the adjustment will be taken into account as gain or loss from the disposition of the asset.

Any other items that are specially allocated under this Article will not be taken into account in computing net profits and net losses.

## **6.3. Allocation of Gain and Loss on Liquidation**

Upon liquidation of the Fund, the Manager shall allocate the Fund's estimated net loss for the year and any loss realized by the Fund on liquidation, including any book adjustment loss, and its estimated net gain for the year and any gain realized upon liquidation, including any book adjustment gain, under Article Five and Article Six. If any Fund property is distributed to the Members in kind, then, for purposes of reflecting the allocation of gain or loss from liquidation in the Members' Capital Accounts, the Fund shall make a book adjustment with respect to the property distributed in kind as provided in the Treasury Regulations under Code Section 704(b).

#### **6.4. Change for Legal Compliance**

The Manager may change the allocation provisions of this Section if the Fund's legal counsel advises the Fund that this change is required under the Code based on the manner in which the Members have agreed to bear losses and to share profits and distributions under this Agreement.

### **7.**

#### **DISTRIBUTIONS**

##### **7.1. Distributions to Members**

Subject to Section 7.02 and Section 7.03, the Manager may determine the amounts and timing of distributions to the Members. Distributions are made in the order of priority set forth in Section 7.03.

##### **7.2. No Unlawful Distributions**

Despite any provision to the contrary in this Agreement, the Fund must not make any distribution that would violate any contract or agreement to which the Fund is then a party or any law, rule, regulation, order or directive of any Governmental Authority then applicable to the Fund.

##### **7.3. Net Cash Flow Distributions**

The Fund shall make the distributions described in Section 7.01 (other than distributions required by Section 16.03, if applicable) in the following order of priority.

###### **(a)Distributions of Net Cash Flows**

The Fund shall make distributions of the residuary Net Profits to the Class A Members pro rata in proportion to their Common Units with 70.0% to those Members and 30.0% to the Class B Unit Members.

###### **(b)Distributions of Remaining Amounts**

The Fund shall then make distributions any residuary Net Profits to the Class B Unit Members.

##### **7.4. Capital Event Distributions**

Except as otherwise provided in this Agreement, before making any distribution to Common Members, proceeds of any capital transaction will be applied to:

- the principal balance at that time of that portion (or any greater portion thereof that the Manager determines should be repaid) of any loans that the Manager determines are attributable to the capital transaction;
- the amount of all costs and expenses paid or to be paid by the Fund in connection with the capital transaction; and



- a reasonable reserve for future payments that may need to be made by the Fund with respect to the capital transaction.

Thereafter, proceeds shall be made as follows:

**(a) Priority Return of Capital to Common Members**

The Fund shall make distributions to the Common Members in proportion to their Common Units until each Common Member has received distributions equal to the aggregate amount of Capital Contributions made by each Common Member in exchange for Common Units.

**(b) Distributions of Capital Event Proceeds**

The Fund shall then make distributions of the Capital Event proceeds to the Class A Members pro rata in proportion to their Common Units with 70.0% to those Members and 30.0% to the Class B Unit Members.

**(c) Distributions of Remaining Amounts**

The Fund shall then make distributions any Capital Event proceeds to the Class B Unit Members.

**7.5. No Interest or Demand Rights**

All distributions will be made under this Article or Section 16.03(c). Except as specifically set forth in this Article, no Member may demand distributions. If a Member does not withdraw all or any portion of the Member's share of any cash distribution, the Member will not receive any interest on the unwithdrawn amount unless all Members agree.

**7.6. Proceeds from Capital Transactions**

Except as otherwise provided in this Agreement, before making any distribution to Members, proceeds of any capital transaction will be applied to:

- the principal balance at that time of that portion (or any greater portion thereof that the Manager determines should be repaid) of any loans that the Manager determines are attributable to the capital transaction;
- the amount of all costs and expenses paid or to be paid by the Fund in connection with the capital transaction; and
- a reasonable reserve for future payments that may need to be made by the Fund with respect to the capital transaction.

**7.7. Return of Distribution**

Any distribution made to the Members will be considered to comply with Applicable Law if the distribution is made from available assets of the Fund. If a court of competent jurisdiction finds that a distribution violates Applicable Law and the request for return of the distribution is approved by a Majority Vote of the Voting Members, the Members must return their respective share of that distribution. The Fund's creditors are deemed to have notice of the provisions of this Article and of the fact that Members are not required to return a distribution unless the

request for return of the distribution has been approved by a Majority Vote of the Voting Members.

## **8.**

### **FUND MANAGEMENT**

#### **8.1. Management by Manager**

The Fund is managed by the Manager appointed under Section 8.02. The Manager shall manage and administer the Fund's property and perform all other duties prescribed for a Manager by the Act. The Manager may take all actions necessary, useful, or appropriate for the ordinary management and conduct of the Fund's business. Except as otherwise provided in Section 8.16, the Manager has the exclusive authority to manage the operations and affairs of the Fund, subject in all cases to the requirements of Applicable Law.

#### **8.2. Appointing Managers**

Any Voting Member may be appointed as Manager. RENTDUE Capital LLC is appointed as Manager of the Fund.

#### **8.3. Manager's Voluntary Resignation**

Subject to any contract between the Fund and the Manager, any Manager may resign at any time by giving written notice to the Members. A resignation takes effect on the date the notice is received or later if specified in the resignation notice. Unless otherwise specified, the resignation need not be accepted to make the Manager's resignation effective. A Manager's resignation does not prejudice the Fund's rights under any contract to which the Manager is a party on behalf of the Fund.

#### **8.4. Vacancy in the Office of Manager**

If the Manager withdraws, is removed, or otherwise cannot serve as Manager for any reason, the Voting Members shall designate a Manager to fill the vacancy by a Majority Vote within 90 days after the date the last remaining Manager stops serving. The appointed Manager will automatically have the rights, authorities, duties, and obligations of a Manager under this Agreement.

#### **8.5. Bond, Compensation, and Expenses of Manager**

Except to the extent required by Applicable Law, no Manager is required to furnish bond or other security in order to serve as Manager. Any Manager is entitled to receive a reasonable salary or other compensation for services. Additionally, the Manager is entitled to reimbursement for reasonable costs and expenses incurred in conducting the business of the Fund.

#### **8.6. Manager's Responsibility to File Necessary Forms**

The Manager shall take all action necessary to assure prompt and timely filing of any amendments to the Certificate of Formation according to this Agreement and all required state and federal tax returns, reports, and forms.

#### **8.7. Extent and Scope of Manager's Services**

The Manager shall adequately promote the interest of the Fund and the Members and shall commit the necessary time and effort to do so. The Manager is not required to devote full-time hours to Fund business.

#### **8.8. Manager's Fiduciary Duties**

This Agreement does not create or impose any fiduciary duty on any Manager. Each of the Members and the Fund waive all fiduciary duties that, absent this waiver, may be implied by Applicable Law. The provisions of this Agreement that restrict the Manager's duties and liabilities replace any duties and liabilities otherwise existing at law or in equity. The Members and the Fund acknowledge and agree that each Manager's duties to the Fund are only as expressly set forth in this Agreement.

#### **8.9. No Personal Liability for Capital Contributions**

The Manager is not personally liable for the return of any portion of any Member's Capital Contribution. Any return of capital will only be made from available assets of the Fund.

#### **8.10. Manager's Power to Amend**

The Manager may, without the consent of the Members, amend any provision of this Agreement or the Certificate of Formation and prepare and deliver any documents to the extent necessary to reflect:

- a change in the Fund's name or its principal office location;
- the admission, substitution, or termination of Members according to this Agreement;
- a change that the Manager determines necessary or advantageous to qualify or to maintain qualification as a limited liability company or a company in which the Members have limited liability under the laws of any jurisdiction, or to ensure that the tax treatment of the Fund does not change except as otherwise provided in this Agreement;
- a change that does not adversely affect the Members in any material respect or that is required or contemplated by this Agreement; or
- any other similar amendments.

Any other amendments must be made in accordance with Section 19.18.

#### **8.11. Delegation to Agents and Others**

The Manager may employ agents, employees, accountants, attorneys, consultants, and other persons necessary or appropriate to carry out the business and affairs of the Fund, whether or not the person or persons are Affiliates or are employed by an Affiliate.

The Manager may direct the Fund to pay reasonable expenses such as fees, costs, salaries, wages, and other compensation as the Manager determines to be appropriate as a Fund expense. These expenses may include payment or reimbursement for all fees, costs, and expenses incurred in the Fund's formation and organization.

The Manager may delegate management functions to any corporation, partnership, limited liability company, or other entity qualified to manage the property and to conduct the business activities of the Fund. Delegation of management powers does not relieve a Manager from personal liability for management decisions and operations of the Fund. Any delegation of authority is to be considered in compensating a Manager for services to the Fund.

#### **8.12. Appointment, Removal, and Resignation of Officers**

The Manager may appoint officers and define their function and authority. Any appointment and delegation of function or authority must be in writing and kept with the Fund records. The officers shall exercise the powers and perform the duties as the Manager determines from time to time.

The Manager may remove an officer at any time, with or without cause. Any officer may resign at any time by giving written notice to the Fund. Any resignation takes effect on the date of the receipt of the notice or later time if specified in the notice. Unless otherwise specified in the notice, the resignation need not be accepted to be effective. A resignation is without prejudice to any rights of the Fund under any contract to which the officer is a party. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause must be filled by the Manager.

#### **8.13. Manager's Agency Authority**

The Manager has the authority to bind the Fund in contracts and other dealings with Third Parties in the ordinary course of the Fund's business and any other matter. Except with the vote of the Members in accordance with Article Ten, no Manager may make any representation about the Fund that is likely to have a material impact on the Fund's business or reputation.

#### **8.14. Third-Party Reliance**

Any Third Party dealing with the Fund may rely on a notarized writing signed by a Manager of the Fund stating that the Manager has authority to act for the Fund. No person relying in good faith upon the authority of a Manager will incur any liability to the Fund for acts made in reliance upon the Manager's representations that the Manager's powers are then in effect.

### **9.**

## **MEMBER RIGHTS AND OBLIGATIONS**

#### **9.1. Limited Liability of Members**

Except as required by Applicable Law, a Member's status as a Member does not obligate the Member for any debt, obligation, or liability of the Fund or of other Members whether arising in contract, tort, or otherwise.

No Member will be required to contribute capital to the Fund for the payment of any losses or for any other purposes. No Member will be responsible or obligated to any Third Party for any debts or liabilities of the Fund in excess of the amount of:

- that Member's unpaid required Capital Contributions;
- unrecovered Capital Contributions; and
- that Member's share of any undistributed Fund profits.

#### **9.2. No Right to Participate in Management**

Except as expressly provided in this Agreement, no Member may participate in the management and operation of the Fund's business and investment activities or bind the Fund to any obligation or liability whatsoever. A Voting Member may exercise any power authorized by the Act that a Voting Member may exercise without being considered to be taking part in the control of the Fund's business.

#### **9.3. Members' Fiduciary Duty**

A Member does not have any fiduciary duty to the Fund or to any other Member solely by reason of being a Member. If this Agreement expressly relieves a Manager of a responsibility that the Manager would otherwise have and imposes the responsibility on one or more Members, those Members will be treated as Manager with respect to that responsibility under Section 8.12.

#### **9.4. Member's Agency Authority**

No individual Member has the right or authority to bind the Fund in contracts and other dealings with Third Parties—regardless of whether the contracts and other dealings occur in the ordinary course of the Fund's business—without a vote of the Members except as provided in Article Ten. No individual Member may make any representation concerning the Fund that is likely to have a material impact on the Fund's business or reputation.

#### **9.5. Transfer of Fund Assets**

A Member may not transfer legal or beneficial title to Fund property except to the extent permitted by the laws of the State of Wyoming relating to the winding up of the Fund in the absence of a qualified Manager. Any Member who acts in that capacity may do so only after first submitting an affidavit of fact stating the conditions under which the Member serves. Any affidavit prepared according to this provision must be kept with the Fund records.

#### **9.6. Restrictions on Withdrawal or Dissociation Rights**

A person will remain a Member as long as that person holds any Units in the Fund. As long as a Member continues to hold any Units, the Member does not have the ability to withdraw, dissociate, or resign as a Member or receive a return of any Capital Contributions before the Fund's dissolution and winding up under this Agreement and Applicable Law. A Member does not dissociate, withdraw, or otherwise cease to be a Member because of the Member's bankruptcy or because of any event specified in the Act. A Member's withdrawal, dissociation, resignation or attempted withdrawal, dissociation, or resignation before the Fund's dissolution or winding up is null and void *ab initio*.

#### **9.7. Fund Continues after a Member's Death**

A Member's death will not cause the Fund to dissolve. If a Member dies, the remaining Member or Members will continue the Fund and its business.

#### **9.8. No Partition Rights**

Title to the Fund's assets is vested solely in the Fund and not owned by any Member. Each Member, individually and on behalf of the Member's successors and assigns, expressly waives any right to have any Fund property partitioned.

#### **9.9. Member Expulsion**

The Fund may not expel a Member under any circumstances.

### **10.**

#### **MEMBER VOTING AND VOTING RIGHTS**

##### **10.1. Voting Members**

For purposes of this Agreement:

- the Common Units may be *Voting Units* or *Non-Voting Units* as specified in this Agreement or in the Schedule of Members, and
- the holders of the Common Units are *Voting Members* or *Non-Voting Members* as specified in this Agreement or in the Schedule of Members.

## **10.2. Voting Rights**

Each Voting Member holds a Voting Interest and has the right to vote the holder's proportionate Units in the Fund regarding all matters that all Voting Members have a right to vote under this Agreement or by Applicable Law.

Example: A Voting Member that holds 35.5% of all of the Units entitled to vote on a matter will have a 35.5% Voting Interest in the Fund and will have 35.5 votes out of 100 votes that may be cast on that matter.

## **10.3. Matters on Which Voting Members Must Vote**

The Manager may not take any of the following actions without approval by the Manager and a Majority Vote (or greater vote if required by this Agreement or Applicable Law) of the Voting Members:

- appointing a Manager, subject to the provisions of Section 8.02;
- removing a Manager, subject to the provisions of Section 8.04;
- electing a successor Manager, subject to the provisions of Section 8.07;
- amending this Agreement; and
- any matter requiring the vote of the Voting Members under any mandatory provision of Applicable Law.

The Voting Members may call or hold any meeting of the Voting Members, provide notice of the meeting, form a quorum for the meeting, or take any action by vote at a meeting or by written consent without a meeting, in all cases to take any action or conduct any business permitted by this Section.

Assignees may not vote.

## **10.4. No Voting Rights by Non-Voting Members**

Membership with Non-Voting Units does not entitle their holders to vote on any matters required or permitted to be voted on by the Members.

## **10.5. Approval or Consent of Members**

Unless provided otherwise by this Agreement or Applicable Law, any action of the Voting Members requires a Majority Vote of the Voting Members in favor of the action.

## **10.6. Voting Members Who Are under Court Orders**

The vote, consent, or participation of any Voting Member under any kind of court order charging, restraining, prohibiting, or in any way preventing any Voting Member from participating in Fund matters is not required in order to obtain the necessary percentage vote or consent or participation for the Fund to act upon any proposed action.

#### **10.7. Voting by Proxy**

The Voting Members may appoint a proxy to vote or otherwise act for the Voting Members under a written appointment form signed by the Voting Members or the person's attorney in fact. A proxy appointment is effective when received by the secretary or other officer or agent of the Fund authorized to tabulate votes. A fiduciary's general proxy is given the same effect as the general proxy of any other Voting Members. A proxy appointment is valid for 11 months unless otherwise specifically stated in the appointment form, or unless the authorization is revoked by the Voting Member who issued the proxy. Should any Voting Member not cast a vote for which it is entitled to vote, or any Voting Members appointed proxy not cast a vote for which they have been appointed by the Voting Member as proxy, the Voting Member shall automatically appoint the Manager as their proxy.

### **11.**

#### **MEMBER MEETINGS AND NOTICE**

##### **11.1. Member Meetings**

The Members may designate when and where they meet. Member meetings may be held at the Fund's principal office or any other place (either within or outside the State of Wyoming the Members determine from time to time.

##### **11.2. Special Meetings**

Special meetings of the Members must be called by Majority Vote of the Voting Members. Special meetings of the Members require notice to be delivered to the Members according to this Agreement. Any shorter notice period must be approved by all the Voting Members. Any Member may waive this notice as to himself or herself.

##### **11.3. Meeting Notice**

The Manager shall deliver notice to each Voting Member of record entitled to vote at the meeting at the address in the Fund records at least two but no more than 30 days before the meeting date. The notice must state the date, time, and place of any meeting of the Members and a description of the meeting's purpose.

##### **11.4. Waiving Meeting Notice**

A Member may waive notice of any meeting before or after the meeting's date and time stated in the notice by delivering a signed waiver to the Fund to include in the minutes. If a Member attends any meeting in person or by proxy, the Member waives objection to lack of notice or to defective notice of the meeting unless the Member objects to holding the meeting or transacting business at the meeting. The Member waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice unless the Member objects to considering the matter when it is presented.



### **11.5. Action by Written Consent**

Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is taken by all the Voting Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken. These consents, in the aggregate, must be signed by all of the Voting Members entitled to vote on the action and delivered to the Fund to be included in the minutes. This consent has the same force and effect as a vote at a meeting with a quorum present and may be stated as such in any document or instrument filed with the Wyoming Secretary of State.

### **11.6. Quorum**

For any meeting of the Members, a quorum requires the presence of Voting Members holding at least two-thirds of the Voting Units entitled to vote at the meeting. Any time the Voting Members are conducting business at a meeting of the Voting Members, a quorum of the Voting Members must be present. If a quorum is not present at any meeting of the Voting Members, the Voting Members present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

### **11.7. Presence**

Any Member may participate in any meeting using any means of communication by which all Members participating may simultaneously hear each other during the meeting. Any Member participating in this way is considered present in person at the meeting.

### **11.8. Conduct of Meetings**

At any meeting of the Members, the Voting Members shall appoint a natural person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting, to be kept with the Fund records.

## **12.**

### **BOOKS, RECORDS, AND BANK ACCOUNTS**

#### **12.1. Books and Records**

The Manager shall keep books of account regarding the operation of the Fund at the principal office of the Fund or at any other place the Manager determines. The Manager shall keep the following records:

- a current list of the full names and last known addresses of each past and present Manager and Member and an indication for each Member whether or not the Member is a Common Member or Preferred Member;
- a copy of the Certificate of Formation (and any amendments) and copies of any powers of attorney under which any certificate has been signed;

- copies of the Fund's federal, state, and local income tax returns and any reports for the three most recent Taxable Years, if required;
- copies of this Agreement (and any amendments);
- copies of any financial statements of the Fund for the three most recent Taxable Years; and
- any other documents required by Applicable Law.

#### **12.2. Accounting and Taxable Year**

The Manager shall keep books of account consistent with any method authorized or required by the Code and as determined by the Manager. The Manager shall close and balance the books at the end of each Taxable Year. The Members may choose any period authorized or required by the Code for the Fund's Taxable Year.

#### **12.3. Reports**

Within a reasonable time after each Taxable Year ends, the Manager shall provide the information required to prepare and file individual tax returns to all Members. The Manager shall prepare these financial statements at the Fund's expense.

#### **12.4. Member Inspection Rights**

Upon reasonable notice from each Member, the Fund shall—and shall cause its Manager, officers, and employees to—provide reasonable access to each Member and its Legal Representatives to Fund Information during normal business hours. *Fund Information* is the information accessible to the Member and its Legal Representatives by exercising the inspection right to examine and make copies of the corporate, financial, and similar records, reports, and documents of the Fund, including all books and records, minutes of proceedings, internal management documents, operations reports, reports of adverse developments, management correspondence, and communications with the Manager.

#### **12.5. Limitations on Member Inspection Rights**

Reasonable access shall be provided to each Member and its Legal Representatives to Fund Information during normal business hours if:

- the Member or its Legal Representative requests the Fund Information for a stated purpose that is material to the Member's interest as a Member;
- the Member makes a written demand received by the Fund, specifically describing the Fund Information requested and the stated purpose; and
- the Fund Information requested is directly connected to the Member's purpose.

Within 10 days after receiving a written demand for Fund Information, the Fund shall inform the Member in writing whether the Fund agrees to provide the demanded Fund Information to the Member and when the Fund will provide the information or whether the Fund declines to provide any demanded Fund Information and the Fund's reason for declining.

## **12.6. Other Information**

The Fund and each Manager shall provide to each other Manager—without demand—any information concerning the Fund’s activities, financial conditions, or other circumstances that the Fund knows is material to the proper exercise of the Manager’s rights and duties under the Agreement or the Act. Neither the Fund nor any Manager is responsible for failure to provide this information if the Fund or Manager reasonably believes that the Manager in question already knows the information.

Whenever the Act or this Agreement requires or allows a Member to give or withhold consent to a matter, the Fund shall, without demand, provide the Member with all information that is known to the Fund and is material to the Member’s decision before the consent is given or withheld.

## **12.7. Budget**

No later than 30 days before each Taxable Year begins, the Fund may, at the Members’ election, prepare and submit a Budget. The Fund shall use commercially reasonable efforts to operate in all material respects in accordance with any Budget set by the Fund.

## **12.8. Bank Accounts and Fund Funds**

The Manager shall deposit all cash receipts in the Fund’s depository accounts. All accounts used by or on behalf of the Fund are the Fund’s property, and will be received, held, and disbursed by the Manager for the purposes specified in this Agreement. The Manager may not commingle Fund funds with any other funds.

## **13.**

### **COVENANTS, REPRESENTATIONS, AND WARRANTIES**

#### **13.1. Member Representations, Warranties, and Acknowledgements**

By signing and delivering this Agreement or a Member Joinder, each Member, whether admitted as of this date or under Section 14.07, represents and warrants to the Fund and acknowledges the following.

##### **(a) No Fraudulent Transfer**

The Member is not entering into this Agreement with the actual or constructive intent to hinder, delay, or defraud its present or future creditors and is receiving reasonably equivalent value and fair consideration for the Member’s Capital Contribution.

##### **(b) Clear Title to Capital Contribution**

The Member’s Capital Contribution has been contributed, transferred, assigned, and conveyed to the Fund free and clear of any liens or other obligations other than those existing on this date and disclosed in writing to the Members.

**(c)No Securities Registration**

The Member's Units have not been registered under the Securities Act or the securities laws of any other jurisdiction, are issued in reliance upon federal and state exemptions for transactions not involving a Public Offering, and cannot be disposed of unless they are subsequently registered or exempted from registration under the Securities Act and the provisions of this Agreement have been complied with.

**(d)Limited Transferability**

The transferability of the Member's Units is severely limited.

**(e)No Reporting Requirements**

The Fund will not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not file reports, proxy statements, or other information with the Securities and Exchange Commission or with any state securities commission.

**(f)Acquisition for Own Use**

The Member's Units are being acquired for its own account solely for investment and not with a view to resell or distribute the Units.

**(g)Independent Review and Analysis**

The Member has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Fund and the Member acknowledges that it has been provided adequate access to the personnel, properties, premises, and records of the Fund for this purpose.

**(h)No Reliance on Member Representations**

The Member's decision to acquire Units has been made by the Member independent of any other Member and independent of any statements or opinions as to the advisability of the purchase or as to the business, operations, assets, liabilities, results of operations, financial condition, and prospects of the Fund that may have been made or given by any other Member or by any agent or employee of any other Member.

**(i)Experience in Financial and Business Matters**

The Member has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Fund and of making an informed decision.

**(j)Economic and Financial Risk**

The Member bears the economic risk of investment for an indefinite period as the Units are not registered under the Securities Act or any state securities laws and cannot be offered or sold unless subsequently registered or unless an exemption from registration is available.

**(k)Due Authorization**

If this Agreement is executed or joined in on behalf of a partnership, trust, corporation or other entity, the person signing or joining this agreement on behalf of the Member has been duly authorized to sign and deliver this Agreement and all other documents and instruments

signed and delivered on behalf of the Member in connection with this Agreement and to consummate the transactions contemplated by this Agreement.

**(l)No Legal Violations**

The Member's signing, delivery, and performance of this Agreement does not contravene or result in a default in any material respect under any law or regulation applicable to the Member.

**(m)No Conflicts**

The signing and delivery of this Agreement does not, and the consummation of the transactions contemplated by this Agreement will not, violate any material contractual restriction or commitment of any kind or character to which the Member is a party or by which the Member is bound.

**(n)No Required Consents**

The signing, delivery, and performance of this Agreement does not require the Member to obtain any consent or approval that has not already been obtained.

**(o)Binding Agreement**

This Agreement is valid, binding, and enforceable against the Member in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles, regardless of whether considered at law or in equity.

These representations, warranties, and acknowledgments do not replace, diminish, or otherwise adversely affect any Member's representations and warranties made by it in any agreement by any Member to join or otherwise acquire an interest in the Fund, as applicable.

**13.2. Breach by Members or Assignees**

Any Member or Assignee who breaches this Agreement is liable to the Fund for damages caused by the breach, including attorney's fees and litigation expenses. The Fund may offset damages against any distributions or return of capital to the breaching Member or Assignee.

While holding any Units, a Member or Assignee who interferes in the management of the Fund's affairs is in breach of this Agreement.

**14.**

**TRANSFER OF UNITS**

**14.1. Transferability of Units**

No Member may transfer any Units either voluntarily or involuntarily by any means without the written consent of the Manager. The Manager may approve a voluntary or involuntary transfer of Units without the consent of the Members. The Members may transfer any Units without the written consent of the Manager if the transfer is:

- permitted under Article Fifteen;
- permitted under Section 14.02; and
- as otherwise provided in this Article.

The Manager are not required to consent to any attempted transfer and will not be subject to any liability for withholding consent. The transferee of a voluntary transfer of Units permitted by this Section will be admitted as an Additional Member only in compliance with Section 14.07. Any attempted transfer of Units or the admission of an Additional Member in violation of this Section and Section 14.07 is null and void *ab initio*.

#### **14.2. Permitted Transfers**

Despite the transfer restrictions in Section 14.01, a Member may transfer Units without the written consent of the Manager if:

- the transferee is the transferring Member's Immediate Family or
- the transferee is a revocable or irrevocable trust for the sole benefit of the transferor during his or her life or transferor's Immediate Family.

A transfer to a transferee otherwise permitted by this Section will only be permitted if:

- the transfer does not result in any event of default as to any secured or unsecured obligation of the Fund;
- the transfer does not cause a reassessment of any real property owned by the Fund; and
- the transfer does not cause any adverse material impact to the Fund.

A transfer to a revocable or irrevocable trust for the sole benefit of the transferor's Immediate Family or their descendants will be considered a transfer to Immediate Family for purposes of this Section if the trustee and any successor trustees of the trust are also Immediate Family. For a trust to be considered a Permissible Transferee, the trustee must be specifically and irrevocably prohibited from gifting, selling, or distributing the Units held by the trust to a person other than Immediate Family.

#### **14.3. Effect of Permitted Transfer**

As a condition to the effectiveness of any Permitted Transfer under Section 14.02, the transferee will execute an acknowledgment of and consent to these provisions. If any event requiring or permitting the purchase of the transferring Member's Units under this Agreement occurs, the transferee is required or permitted, as the case may be, to sell and transfer the Units as provided in this Agreement in the same manner and to the same extent as the original Member. All references in this Agreement to Units or to the amount of Units held or owned by any Member include Units owned by any transferee of the transferring Member.

The Permitted Transferee of a transfer of Units permitted by Section 14.02 will be admitted as an Additional Member only in compliance with Section 14.07. As a condition of admission as

Additional Member, the Fund may require the transferee to sign a Member Joinder or otherwise accept this Agreement in writing.

#### **14.4. Securities Restriction**

Despite the foregoing or anything else in this Agreement, the Fund may not approve—and each Member agrees that it will not directly or indirectly make—any transfer or addition of an Additional Member except as permitted under the Securities Act and other applicable federal or state securities or blue sky laws. The Fund may condition a transfer of Units on receipt of an opinion of counsel in form and substance satisfactory to the Fund to the effect that the transfer may be made without registration under the Securities Act.

#### **14.5. Transferee Treated as an Assignee until Admitted as an Additional Member**

The transferee of Units will hold the interest only as an Assignee until the transferee satisfies all the requirements of Section 14.07 to become an Additional Member. As an Assignee, the transferee will have only those rights in Section 14.06.

#### **14.6. Assignee's Rights, Limitations, and Obligations**

An Assignee may receive distributions from the Fund to the same extent that the transferring Member would receive distributions under this Agreement, but otherwise has substantially fewer rights than a Member. An Assignee only holds a right to receive economic benefits when actually distributed by the Fund in respect to the assigned Units. Other limitations on Assignees' rights include:

- access only to the Fund records and information specifically authorized for the Assignees under the Act;
- no right to vote in any Fund matters; and
- no other legal or economic rights.

Regardless of whether an Assignee is admitted as a Member, an Assignee is subject to all of the obligations of a Member, including the obligation to make Capital Contributions as provided in Section 4.05. If an Assignee fails to fulfill any monetary obligation imposed on Members under this Agreement, including the obligation to make Capital Contributions as provided in Section 4.05, then despite any other provisions of this Agreement, any amount that otherwise would be paid or distributed to the Assignee under Article Seven or Article Sixteen will not be paid to the Assignee. Instead, the amount will be paid or otherwise applied on the Assignee's behalf to any monetary obligation of the Assignee that has not been paid or deemed paid.

#### **14.7. Requirements to Become an Additional Member**

An Assignee or other prospective Additional Member will not become an Additional Member and will not have any rights as a Member until all of the conditions, consents, and procedures in this Section have been fully satisfied.

**(a) Approval by the Manager**

An Additional Member may only be added with the unanimous written consent of the Manager.

**(b) Certain Legal Assurances**

If required by the Manager, the prospective Additional Member must provide evidence satisfactory to the Manager that admission of the prospective Member will not violate any applicable securities law, cause a termination of the Fund under applicable provisions of the Code, or alter the status of any tax election made by the Fund.

**(c) Transfer Instruments**

If a prospective Additional Member is acquiring Units in connection with a Member's transfer of Units, the assigning Member and the Assignee shall sign, acknowledge, and deliver instruments of transfer and assignments to the Fund, in the form and substance satisfactory to the Fund.

**(d) Executing All Other Agreements**

The prospective Additional Member must sign all other agreements and instruments requested by the Manager. These instruments include a Member Joinder or other written acceptance and adoption by the Assignee of this Agreement.

**(e) Reasonable Transfer Fee**

An Assignee may be required to pay any professional fees incurred in obtaining opinions or valuations and a reasonable transfer fee to the Fund. The Manager may establish the transfer fee amount on a case-by-case basis.

Any attempt to admit a Member that violates this Article will be null and void *ab initio*.

**14.8. Additional Member's Effective Admission Date**

The effective date of an Additional Member's admission is the date on which the Members and the Manager accept the Assignee as an Additional Member under this Agreement and the requirements of Section 14.07 are satisfied.

**14.9. Amending Operating Agreement and Certificate of Formation**

If required by Applicable Law, upon the admission of an Additional Member, the Manager may amend the Operating Agreement, the Certificate of Formation, or both to reflect any substitution or addition of the Additional Member. The Fund may assess any associated fees, costs, or other expenses associated with that Additional Member.

**14.10. Voting Rights of Transferred Units**

A Voting Member who transfers Voting Units to an Assignee will continue to hold all voting rights associated with the assigned Units until the Assignee of the transferred Units satisfies all of the requirements to become an Additional Member under Section 14.07.



If an Assignee acquires Units due to the death of a Voting Member, the voting rights associated with the transferred Units will be suspended and disregarded for purposes of calculating votes until the Assignee of the transferred Units satisfies all of the requirements to become an Additional Member under Section 14.07.

**14.11. Effect of Improper Transfer**

Any attempted transfer of Units or the admission of an Additional Member in violation of this Article and Article Fifteen is null and void *ab initio*. No such transfer or admission may be recorded on the Fund's books and the purported transferee or Member in any such transfer will not be treated (and, in the case of a transfer, the purported transferor will continue to be treated) as the owner of such Units for all purposes of this Agreement. If the ownership of Units is in doubt, or if there is reasonable doubt as to who may receive a distribution attributable to Units, the Manager may accumulate the amounts to be distributed until this issue is finally determined and resolved. The Manager shall credit any accumulated amounts to the Capital Account associated with the Units.

**14.12. Creditor Rights; Charging Order Sole and Exclusive Remedy**

If a creditor obtains a judgment by a court of competent jurisdiction against any Member or Assignee, the court may charge the Member or Assignee's Units with payment of the unsatisfied amount of the judgment from distributions attributable to the affected Units, but only to the extent permitted by the Act. To the extent any Units are charged with satisfaction of a judgment, the judgment creditor will receive no more than the rights of an Assignee under Section 14.06 and will not be admitted as a Member of the Fund.

The charging order is the exclusive remedy by which a judgment creditor of a Member or an Assignee of Units may obtain any satisfaction from the Fund toward any judgment against the Member or Assignee. This Section does not deprive any Member or Assignee of rights under any exemption laws available to the Member or Assignee.

**14.13. Assignee or Charging Order Holder Assumes Tax Liability**

The Assignee of Units and any person who acquires a charging order against Units shall report income, gains, losses, deductions and credits regarding the interest for the period in which the Assignee interest is held or for the period the charging order is outstanding.

**15.**

**RIGHT OF FIRST REFUSAL**

**15.1. Fund and Members Right of First Refusal**

No Member may transfer any Units, other than as permitted under Section 14.02, without first offering in writing to sell the Units to the Fund and to all other Members as provided in this Article.

### **15.2. Notice of Intent to Transfer**

Before transferring Units, a Member shall first give notice of the intent to transfer to the Manager and to all other Members. Any notice of intent to transfer must include a copy of any written offer to purchase the Units that the Member has received. If the Member received only an oral offer, a written explanation of the oral offer must be attached to the notice. The written explanation must completely detail the purchase price and payment terms.

### **15.3. Fund's Right to Purchase**

The Fund has the first right to purchase all or any portion of the Units according to the terms of any written notice of an offer. The Fund may exercise this first right to purchase by giving written notice of the Fund's intent to purchase to the selling Member within 99 days of receiving the written notice of the offer.

### **15.4. Members' Right to Purchase**

If the Fund does not provide written notice of an intent to purchase the Units within 99 days of receiving the written notice of the offer or if the Fund provides written notice of an intent not to purchase the Units, any Member may purchase any portion of the Units according to the terms of the offer. A Member may exercise this right to purchase by giving notice of intent to purchase to the selling Member within 198 days of receiving the written notice of the offer.

If more than one Member exercises the right to purchase the same Units, each Member may purchase a *pro rata* share of the Units in proportion to the respective Units of all Members that exercise the right to purchase the Units, as determined before the offer of sale.

### **15.5. Payment Terms under Priority Right to Purchase**

If the Fund or Member exercises the priority right to purchase Units as provided above, then the Fund or a purchasing Member shall pay the purchase price according to the payment terms specified in the written notice of the offer provided by the selling Member.

### **15.6. Closing on Purchase by the Fund or a Member**

Any purchase of Units under this Section will close at the Fund's principal office within 99 days from the date that the Fund or the purchasing Members exercise their priority right to purchase Units.

### **15.7. Transfer to Third Party after Non-Exercise of Priority Right**

If neither the Fund nor the purchasing Members exercise their respective priority right to purchase the Units, the selling Member may transfer its Units to the party that made the original offer for the purchase price and on the terms in the original offer.

Any transfer to a Third Party under this Section must close within 99 business days from the earlier of:

- the date on which priority rights of the Fund and the other Members to purchase expire; and

- the date on which the Fund and the other Members have provided written notice of their intent not to exercise their respective priority rights to purchase.

If the Units are not sold to the prospective purchaser within the specified time, the Fund and the other Members will again be offered an opportunity to exercise their respective priority rights to purchase the Units under Section 15.03 and Section 15.04.

## **16.**

### **DISSOLUTION AND LIQUIDATION**

#### **16.1. Dissolution Events**

The Fund will be dissolved only if an event described in this Section occurs.

##### **(a)Dissolution by the Manager**

The Fund will be dissolved by the Manager, subject to any special vote required by Article Ten.

##### **(b)Judicial Dissolution**

The Fund will be dissolved upon the entry of a decree of judicial dissolution by a court of competent jurisdiction.

After dissolution, the Fund may only conduct activities necessary to wind up its affairs.

#### **16.2. Effect of Dissolution**

Dissolution of the Fund will be effective on the day on which the event described in Section 16.01 occurs, but the Fund will not terminate until the winding up of the Fund has been completed, the assets of the Fund have been distributed as provided in Section 16.03, and the Fund's Certificate of Formation has been cancelled as provided in Section 16.06.

#### **16.3. Liquidation**

After dissolving the Fund, the Manager will have full authority to sell, assign, and encumber any or all of the Fund's assets and to wind up and liquidate the affairs of the Fund's in an orderly and businesslike manner. The Manager shall liquidate the Fund's assets and apply and distribute proceeds from the liquidation of the assets as follows.

##### **(a)Creditor Payment**

The proceeds from the liquidated property will first be applied toward or paid to any non-Member creditor of the Fund in the order of payment required by Applicable Law.

##### **(b)Provision for Reserves**

After paying liabilities owed to non-Member creditors, the Manager shall set up such reserves as the Manager determines is reasonably necessary. The Manager may, but need not, pay over any reserves for contingent liabilities to a bank to hold in escrow for later payment.

After the Manager is reasonably satisfied that any liabilities have been adequately resolved, the Manager shall distribute any remaining reserves to the Members or their assigns as provided in Section 16.03(c).

**(c)Distributions to Members**

After paying liabilities owed to non-Member creditors and establishing reserves, the Manager shall satisfy any debts owed to the Members with any remaining net assets of the Fund, and then distribute any remaining assets to the Members in the same manner as distributions are made under Article Seven.

**16.4. Fund Property Sole Source**

Fund property is the sole source for the payment of any debts or liabilities owed by the Fund. Any return of Capital Contributions or liquidation amounts to the Members will be satisfied only to the extent that the Fund has adequate assets. If the Fund does not have adequate assets to return the Capital Contributions, the Members will not have any recourse against the Fund or any other Members, except to the extent that other Members may have outstanding debts or obligations owing to the Fund.

**16.5. Cancellation of Certificate of Formation**

Upon completing the distribution of the Fund's assets as provided in Section 16.03(c), the Fund will be terminated and the Manager shall cause the cancellation of the Certificate of Formation in the State of Wyoming and of all qualifications and registrations of the Fund as a foreign limited liability company in any other jurisdictions and shall take any other actions necessary to terminate the Fund.

**16.6. Survival of Indemnity Rights, Duties, and Obligations**

For purposes of Article Seventeen, including any Member's right to indemnification under Section 17.04, the Fund's dissolution, liquidation, winding up, or termination for any reason will not release any party from any loss that, at the time of the dissolution, liquidation, winding up, or termination, had already accrued to any other party or which may accrue because of any act or omission occurring before the dissolution, liquidation, winding up, or termination.

**16.7. Fund Asset Sales during Term of the Fund**

The sale of Fund assets during the term of the Fund does not constitute liquidation, dissolution, or termination of the Fund as defined under this Article. The Manager may reinvest the sale proceeds in other assets consistent with the business purposes for the Fund. Further, the Manager may participate in any real property exchange as defined in Code Section 1031 if the exchange fulfills the business purposes of the Fund.

17.

## **EXCULPATION AND INDEMNIFICATION**

### **17.1. Exculpation of Protected Persons**

No Protected Person is liable to the Fund or any other Protected Person for any loss, damage, or claim incurred because of any action taken or not taken by the Protected Person in good-faith reliance on the provisions of this Agreement. This exculpation is only effective if the action or omission is not an Unprotected Act and does not protect any Voting Member from a court order to purchase the Units of another Member who successfully contends that the Member committed actionable, oppressive acts against the other Member.

### **17.2. Good-Faith Reliance**

A Protected Person is fully protected if the Protected Person relies in good faith on the Fund's records or on information, opinions, reports, or statements of the following Persons or groups:

- another Manager;
- one or more employees of the Fund;
- any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the Fund; or
- any other person selected in good faith by or on behalf of the Fund, in each case as to matters that the relying person reasonably believes to be within the other person's area of professional expertise.

The information, opinions, reports, or statements referred to above include financial statements; information, opinions, reports, or statements as to the value or amount of the Fund's assets, liabilities, income, or losses; and any facts pertinent to the existence and amount of assets from which distributions might properly be paid.

In no way does this provision limit any person's right to rely on information as provided in the Act. Any act, omission, or forbearance by a Protected Person on the advice of the Fund's counsel must be conclusively presumed to have been in good faith.

### **17.3. Decision-Making Standards**

When this Agreement permits or requires a Protected Person to make a decision (including discretionary decisions and other grants of similar authority or latitude), the Protected Person is entitled to consider only the interests and factors as the Protected Person chooses, including its own interests, with no obligation to give any consideration to any interest of or factors affecting the Fund or any other person. When this Agreement permits or requires a Protected Person to make a good-faith decision, the Protected Person shall act under this express standard and is not subject to any other standard imposed by this Agreement or any Applicable Law.

#### **17.4. Indemnification**

The Fund shall indemnify, hold harmless, defend, pay, and reimburse any Protected Person against all losses, claims, damages, judgments, fines, or liabilities, including reasonable legal fees or other expenses incurred in their investigation or defense, that arise in connection with any actual or alleged act, omission, or forbearance performed or omitted on behalf of the Fund or any Member in connection with the Fund's business. If the act or omission is not an Unprotected Act, the Fund shall also reimburse any amounts expended in settling any claims (collectively, *Indemnity Losses*) to which the Protected Person may become subject because:

- of any act or omission or alleged act or omission on behalf of the Fund, or any Member;
- the Protected Person is or was acting in connection with the Fund's business as a partner, member, stockholder, controlling Affiliate, manager, director, officer, employee, or agent of the Fund; any Member; or any of their respective controlling Affiliates; or
- the Protected Person is or was serving at the Fund's request as a partner, member, manager, director, officer, employee, or agent of any person including the Fund.

A Protected Person's conduct will be determined under Article Eighteen or a final, nonappealable order of a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or a plea of *nolo contendere* or its equivalent, does not, of itself, create a presumption that the Protected Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that the conduct was unlawful or constituted fraud or willful misconduct.

The indemnity provided by this Article extends to the full extent permitted by the Act as it now exists or may later be amended, substituted, or replaced, but only if the amendment, substitution, or replacement permits the Fund to provide broader indemnification rights than those the Act permits.

#### **17.5. Reimbursement**

The Fund shall promptly reimburse and may provide advancements to each Protected Person for reasonable legal or other expenses incurred in connection with investigating, preparing to defend, or defending any claim, lawsuit, or other proceeding relating to any Indemnity Losses for which such Protected Person may be indemnified under Section 17.04. If it is finally judicially determined that the Protected Person is not entitled to the indemnification provided by Section 17.04, the Protected Person shall promptly reimburse the Fund for any reimbursed or advanced expenses.

#### **17.6. Entitlement to Indemnity**

The indemnification provided by Section 17.04 does not exclude any other indemnification rights under any separate agreement or otherwise. Section 17.04 will continue to protect each Protected Person regardless of whether the Protected Person remains in the position or capacity

under which the Protected Person became entitled to indemnification under Section 17.04 and will inure to the benefit of the Protected Person's executors, administrators, legatees, and distributees.

#### **17.7. Insurance**

To the extent available on commercially reasonable terms, the Manager may purchase, at the Fund's expense, insurance to cover Indemnity Losses covered by these indemnification provisions and to cover Indemnity Losses for any Protected Person's breach or alleged breach of the Protected Person's duties. The Manager will determine the coverage amounts and the deductibles. A decision not to purchase insurance will not affect a Protected Person's right to indemnification (including the right to be reimbursed, advanced expenses, or indemnified for Indemnity Losses under any other provisions of this Agreement) under this Agreement. A Protected Person that recovers any amount for any Indemnity Losses from any insurance coverage shall reimburse the Fund for any amount previously received from the Fund for those Indemnity Losses.

#### **17.8. Indemnification Obligation Funding**

Despite anything in this Agreement to the contrary, any indemnity by the Fund relating to Section 17.04 will be provided out of and to the extent of the Fund's assets. No Member will have any personal liability or will be required to make Capital Contributions to help satisfy the indemnity unless the Member otherwise agrees in writing.

#### **17.9. Securities Indemnity**

Each Member agrees to hold the Fund harmless from all expenses, liabilities, and damages (including reasonable attorneys' fees) arising from a disposition of Units in any manner that violates the Securities Act, any applicable state securities law, or this Agreement. This indemnification includes the Fund's Members, Manager, Member principals, organizers, and controlling persons (as defined in the Securities Act), and any persons affiliated with any of them or with the distribution of the Units.

#### **17.10. Savings Clause**

Article Seventeen survives the Fund's dissolution, liquidation, winding up, and termination. If Article Seventeen or any portion of it is invalidated on any ground by any court of competent jurisdiction, the Fund shall indemnify and hold harmless each Protected Person under any applicable portion of this Article that was not invalidated and to the full extent permitted by Applicable Law. To the extent possible, Article Seventeen supersedes any Wyoming law to the contrary.

#### **17.11. Amendment**

Article Seventeen is a contract between the Fund and, collectively, each Protected Person who serves in that capacity at any time while Article Seventeen is in effect. The Fund and each Protected Person intend to be legally bound under this contract. No amendment, modification, or

repeal of Article Seventeen that adversely affects a Protected Person's indemnification rights for Indemnity Losses incurred or relating to a state of facts existing before the amendment, modification, or repeal will apply without the Protected Person's prior written consent.

**18.**

## **DISPUTE RESOLUTION**

This Article supersedes any rules governing mediation or arbitration under the law of Wyoming or any other jurisdiction.

### **18.1. Resolving Disputes among Members and within the Fund**

The Members and Manager shall use the procedure outlined in this Article to resolve any dispute, contest, or claim that may result among any of the Members or between one or more of the Members and Manager and the Fund that may relate to this Agreement. The purpose of the alternative dispute resolution procedures in this Article is to resolve all disputes, contests, and claims without litigation.

### **18.2. Notice of Controversy and Designating Authorized Representatives**

Any person (*claimant*) who has any dispute relating to the Fund shall provide written notice to all Members and to any other person that has an interest in the controversy (*respondents*) describing the general nature of the controversy. The notice must designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the claimant. Two or more claimants may designate a common authorized representative.

Each respondent shall also designate an Independent Person as an authorized representative who is empowered to fully settle the controversy on behalf of the respondent. Two or more respondents may designate a common authorized representative.

Written notice of the designation of the authorized representatives must be delivered to each party within 10 business days from the date the respondents receive notice of the controversy.

### **18.3. Beginning the Dispute Resolution Procedure**

The authorized representatives shall conduct an initial meeting within 30 days from the date the claimant's notice is delivered to the respondents. The authorized representatives are entitled to collect and review all relevant evidence pertaining to the controversy and to negotiate and resolve the controversy. Resolution of any controversy by the authorized representatives is conclusive and binds all parties. If the authorized representatives do not resolve the controversy within 30 days from the date of their initial meeting, they shall discontinue direct negotiations and submit the controversy to mediation.



#### **18.4. Selecting a Mediator**

Within five days of discontinuing direct negotiations, the authorized representatives shall exchange written lists of natural persons whom they consider to be qualified to serve as a mediator. Within 15 days after they exchange these lists, the authorized representatives shall agree upon one mediator to mediate the controversy. If the authorized representatives do not agree on a mediator, the controversy will be submitted to binding arbitration under Section 18.10.

#### **18.5. Time and Place for Mediation Conference**

The authorized representatives shall promptly designate a mutually convenient time and place for the mediation. If the authorized representatives fail to do so, the controversy will be submitted to binding arbitration under Section 18.10.

#### **18.6. Discovery and Exchange of Information**

The authorized representatives are entitled to fully discover, obtain, and review all information relevant to resolving any controversy.

#### **18.7. Delivery of Written Summaries; Authority to Obtain Professional Assistance**

At least seven days before the first mediation conference, each authorized representative shall deliver to the mediator a concise written summary of fact and law about the issues. The authorized representatives and the mediator may retain legal counsel, accountants, appraisers, and other experts whose opinions may assist the mediator in resolving the controversy.

#### **18.8. Conducting Mediation**

The mediator shall determine the format for mediation conferences, ensuring the authorized representatives have an equal opportunity to review the evidence and any relevant technical and legal presentations. The mediator shall determine the time schedule for resolving the mediation and shall attempt to facilitate the parties' efforts to achieve final resolution of all disputed issues. If the mediator is unable to facilitate a final resolution of all issues, the unresolved issues will be submitted to arbitration under Section 18.10.

#### **18.9. Final Determinations Bind All Parties**

Any final determination made by the authorized representatives, mediator, or arbitrator binds each party who receives notice of a controversy, even if the party does not respond or designate a representative or the party's authorized representative fails or refuses to participate in the designation of a mediator.

#### **18.10. Arbitration**

If any controversy is not finally resolved according to the alternative dispute resolution procedures in this Article, the parties to the controversy shall submit to mandatory and binding arbitration. The controversy will be settled by arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator's judgment may be

entered in any court having competent jurisdiction. If the arbitrator determines that the evidence produced through the arbitration process is insufficient to support a decision, the arbitrator may conclude the arbitration proceedings without a decision.

**18.11. Settlement during Mediation or Arbitration**

At any time before the conclusion of any mediation or arbitration, the authorized representatives may enter an agreement to resolve the controversy. Any settlement agreement will be conclusive and bind all parties.

**18.12. Qualified Appraisals**

If a Qualified Appraisal of the value of a Member's Units is required in order to resolve a dispute, each of the parties to the dispute may choose a Qualified Appraiser to provide a valuation. In the alternative, the parties may agree to select one Qualified Appraiser. The mediator or arbitrator will determine to what extent the Qualified Appraisal will be used in resolving any dispute.

**18.13. Right to Seek Equitable Relief**

If a party materially breaches this Agreement and if the other parties determine in good faith that immediate relief is necessary, the parties alleging the material breach may seek temporary restraining orders, preliminary injunctions, or similar temporary and equitable relief in a court of competent jurisdiction.

**18.14. Prevailing Party Is Entitled to Recover All Reasonable Costs**

The prevailing party in any dispute between any Member or Manager and the Fund or between the Members themselves is entitled to recover from the losing party all reasonable costs incurred, including any attorney's fees and any costs of mediation, arbitration, court fees, appraisals, and expert witnesses.

**19.**

**GENERAL MATTERS**

**19.1. Pro Rata Right to Purchase**

If more than one Member exercises the right to purchase the same Units, each Member may purchase a pro rata share of the Units in proportion to the respective Units of all Members that exercise the right to purchase the Units, as determined before the offer of sale. A remaining Member's pro rata share equals the number of Units the Member owns divided by the total number of Units that all remaining Members own, all determined immediately before the offer is made. If any remaining Member fails to accept the offer, or if any remaining Member accepts the offer for less than his or her pro rata share, then the Members who gave notice of a desire to purchase more than their pro rata shares will purchase the remaining Units allocated among them so that each Member purchases that portion of the remaining Units that equals the number he or she desired to purchase in his or her notice divided by the total number of Units that all accepting

Members gave notice of a desire to purchase. If not accepted, the offer expires at the end of this period. After this procedure is repeated to conclusion, any unpurchased Units may be disposed of in accordance with the terms of this Agreement. The purchase price and terms may not be more favorable than the purchase price and the terms that would have been applicable to the other Members had they purchased the same.

#### **19.2. Expenses**

Except as otherwise expressly provided in this Agreement, the Fund must pay all expenses (including fees and disbursements of counsel, financial advisors, and accountants) incurred in preparing and executing this Agreement, making any amendment or waiver to it, and completing the transactions contemplated by it.

#### **19.3. Binding Effect**

Subject to the restrictions on transfer in this Agreement, this Agreement binds and inures to the benefit of the Members and to their respective successors, personal representatives, heirs, and assigns.

#### **19.4. Further Assurances**

In connection with this Agreement and the transactions contemplated by it, the Fund and each Member agree to provide further assurances if requested by the Fund or any other Member. These further assurances include signing and delivering any additional documents, instruments, conveyances, and other assurances or taking any further actions necessary to carry out the provisions of or transactions contemplated by this Agreement.

#### **19.5. No Waiver**

Any Member's failure to insist upon strict performance of any provision or obligation of this Agreement for any period is not a waiver of that Member's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this Agreement is not a consent to or waiver of any other breach or default in the performance of the same or of any other obligation.

#### **19.6. No Duty to Mail Certificate of Formation**

The Manager does not have an obligation to deliver or mail copies of the Certificate of Formation or any amendments to the Members unless required to do so by the Act.

#### **19.7. Governing Law**

The affairs of the Fund and the conduct of its business are governed by the provisions of this Agreement to the extent such provisions are not in conflict with nonwaivable provisions of Applicable Law or the Certificate of Formation. This Agreement is governed, construed, and administered according to the laws of Wyoming, as from time to time amended, and any applicable federal law. No effect is given to any choice-of-law or conflict-of-law provision or

rule (whether of the State of Wyoming or any other jurisdiction) that would cause the application of the law of any jurisdiction other than those of the State of Wyoming.

**19.8. Venue; Submission to Jurisdiction**

A cause of action arising out of this Agreement includes any cause of action seeking to enforce any provision of or based on any matter arising out of or in connection with this Agreement or the transactions contemplated by it. Except as provided in Article Eighteen, the parties agree that any suit, action, or proceeding, whether in contract, tort, or otherwise, arising out of this Agreement must be brought in a state or federal court or courts located in State of Wyoming and in the county of or nearest to the Fund's principal office if one of these courts has subject-matter jurisdiction over the suit, action, or proceeding. Any cause of action arising out of this Agreement is deemed to have arisen from a transaction of business in the State of Wyoming.

Each party irrevocably consents to the jurisdiction of these courts (and their respective appellate courts) in any cause of action arising out of this Agreement. To the fullest extent permitted by Applicable Law, each party irrevocably waives any objection that it may have now or later to the venue of any action arising out of this Agreement in any of these courts, including an inconvenient-forum petition.

Service of process, summons, notice, or other document by registered mail to the address set forth in Section 19.13 is effective service of process for any suit, action, or other proceeding brought in any court.

**19.9. Waiver of Jury Trial**

Each party to this Agreement acknowledges and agrees that any controversy arising out of this Agreement is likely to involve complicated issues. Therefore, each party irrevocably and unconditionally waives any right it may have to a trial by jury for any cause of action arising out of this Agreement.

**19.10. Equitable Remedies**

Each party to this Agreement acknowledges that its breach or threatened breach of any of its obligations under this Agreement would give rise to irreparable harm to the other parties and monetary damages would not be an adequate remedy. Therefore, each party to this Agreement agrees that if any party breaches or threatens to breach any of its obligations, each of the other parties to this Agreement will be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other equitable relief available from a court of competent jurisdiction (without any requirement to post bond). These equitable remedies are in addition to all other rights and remedies that may be available in respect of the breach.

**19.11. Attorneys' Fees**

If any party to this Agreement institutes any legal cause of action—including arbitration—against another party arising out of or relating to this Agreement, the prevailing party will be

entitled to the costs incurred in conducting the cause of action, including reasonable attorneys' fees and expenses and court costs.

#### **19.12. Remedies Cumulative**

Except to the extent this Agreement expressly provides otherwise, the rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law, in equity, or otherwise.

#### **19.13. Notices**

Unless otherwise stated, all notices, requests, consents, claims, demands, waivers, and other communications called for under this Agreement must be in writing and will be deemed to have been given:

- when delivered by hand (with written confirmation of receipt);
- when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);
- on the date sent by facsimile or email as a PDF document (with confirmation of transmission) if sent during recipient's normal business hours, and on the next business day if sent after normal business hours of the recipient; or
- on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

If notice is required to be given to a minor or incapacitated individual, notice must be given to the minor or incapacitated individual's parent or Legal Representative.

The written notice must be sent to the respective parties at the party's last known address (or at the address a party has specified in a notice given in accordance with this Section). Each Member shall notify the Fund in writing within five days of any change to the Member's address. Notice to the Fund must be addressed as follows:

If to the Fund: 1611 E 2450 S B2  
St George, UT 84790.

#### **19.14. Severability**

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Agreement are to be construed as if the invalid provision had never been included in this Agreement.

Upon a determination that any provision is invalid, illegal, or unenforceable, the parties to this Agreement shall negotiate in good faith to modify this Agreement to give effect to the original intent of the parties as closely as possible in a mutually acceptable manner so that the

transactions contemplated by this Agreement can be consummated as originally contemplated to the greatest extent possible.

**19.15. Separate Counsel**

By signing this Agreement, each party acknowledges that this Agreement is the product of arms-length negotiations between the parties and should be construed as such. Each party acknowledges that he or she has been advised to seek separate counsel and has had adequate opportunity to do so.

**19.16. Entire Agreement**

This Agreement, together with the Wyoming, any agreement by any Member to join or otherwise acquire an interest in the Fund, and all related Exhibits, Schedules, and other agreements specifically referred to in this Agreement, constitutes the sole and entire agreement of its parties with respect to the Agreement's subject matter. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties with respect to the subject matter. As between or among the parties, oral statements or prior written material not specifically incorporated in this Agreement have no force or effect. The parties specifically acknowledge that, in entering into and executing this Agreement, each is relying solely upon the representations and agreements contained in this Agreement and no others.

**19.17. No Third Party Beneficiaries**

Except as provided in Article Seventeen, which benefits and is enforceable by the Protected Persons it describes, this Agreement is for the sole benefit of its parties and their respective heirs, executors, administrators, successors, and assigns. Nothing in this Agreement, express or implied, confers any legal or equitable right, benefit, or remedy of any nature whatsoever upon any other person, including any creditor of the Fund.

**19.18. Amendments**

Except as provided in Section 8.14, no provision of this Agreement may be amended or modified except by a written instrument executed by the Manager and the Members. Despite the foregoing, amendments to the Schedule of Members after any new issuance, redemption, repurchase, or transfer of Units in accordance with this Agreement may be made by the Manager without the consent of or execution by the Members.

**19.19. Multiple Originals; Validity of Copies**

This Agreement may be signed in any number of counterparts, each of which will be deemed an original. Any person may rely on a copy of this Agreement that any Manager certifies to be a true copy to the same effect as if it were an original.

**19.20. Determination of Fair Market Value**

The *Fair Market Value* of any asset is the purchase price that a willing buyer having reasonable knowledge of relevant facts would pay a willing seller for that asset in an arm's length

transaction on any date, without time constraints and without being under any compulsion to buy or sell. Fair Market Value is a good-faith determination made by the Manager based on factors the Manager, in its reasonable business judgment, considers relevant.

20.

## DEFINITIONS AND INTERPRETATION

### 20.1. Definitions

For purposes of this Agreement, the following terms have the following meanings.

#### (a) Act

*Act* means the Wyoming Limited Liability Company Act, as amended from time to time.

#### (b) Additional Member

*Additional Member* means any person not previously a Member who acquires Units and is admitted as a Member according to Section 14.07. An *Additional Member* may be either a Voting Member or Non-Voting Member.

#### (c) Adjusted Capital Account Deficit

*Adjusted Capital Account Deficit* means the negative balance in a Member's Capital Account at the end of a Taxable Year after:

- increasing the Capital Account by the amount, if any, of such negative balance the Member is obligated to restore under this Agreement and the amount of such negative balance the Member is deemed to be obligated to restore under Treasury Regulations sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- reducing the Capital Account with the items described in Treasury Regulations sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

#### (d) Affiliate

*Affiliate* means any of the following persons or any person who controls, is controlled by, or is under common control with any of the following persons:

- a Member;
- a Member's Immediate Family member; or
- a Legal Representative, successor, Assignee, or trust for the benefit of a Member or any Member's Immediate Family members.

For purposes of this definition, *control* means the direct or indirect power to direct or cause the direction of the person's management and policies, whether by owning voting securities, partnership, or other ownership interests; by contract; or otherwise.

#### (e) Agreement

*Agreement* means this Operating Agreement, as amended from time to time.

**(f)Applicable Law**

*Applicable Law* means the Act, the Code, the Securities Act, all pertinent provisions of any agreements with any Governmental Authority and all pertinent provisions of any Governmental Authority's:

- constitutions, treaties, statutes, laws, common law, rules, regulations, decrees, ordinances, codes, proclamations, declarations, or orders;
- consents or approvals; and
- orders, decisions, advisory opinions, interpretative opinions, injunctions, judgments, awards, and decrees.

**(g)Certificate of Formation**

*Certificate of Formation* means the Certificate of Formation filed with the Wyoming Secretary of State as required by the Act, or any other similar instrument required to be filed by the laws of any other state in which the Fund intends to conduct business.

**(h)Assignee**

*Assignee* means the recipient of Units by assignment.

**(i)Book Value**

With respect to any Fund property, *Book Value* means the Fund's adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g). The Book Value of each Fund asset must be adjusted as of the date of this Agreement under Treasury Regulation Section 1.704-1(b)(2)(iv)(f) in a manner determined by the Manager so that the aggregate Book Value of the Fund's assets (net of the Fund's liabilities) as of this date is equal to the aggregate Capital Account balances of the Members as of this date.

**(j)Budget**

*Budget* means the monthly and annual operating budgets for the Fund for the upcoming Taxable Year. The submission must include capital and operating expense budgets, cash-flow projections, covenant compliance calculations of all outstanding and projected indebtedness, and profit-and-loss projections, all itemized in reasonable detail (including itemization of provisions for officers' compensation).

**(k)Capital Account**

*Capital Account* means the account established and maintained for each Member under Section 5.01 and under Treasury Regulation Section 1.704-1(b)(2)(iv), as amended from time to time.

**(l)Capital Contribution**

*Capital Contribution* means the total cash and other consideration contributed and agreed to be contributed to the Fund by each Member. Each initial *Capital Contribution* is shown in the Schedule A, attached and incorporated into this Agreement. Additional *Capital Contribution* means the total cash and other consideration contributed to the Fund by each Member



(including any Additional Member) other than the initial Capital Contribution. Any reference in this Agreement to the Capital Contribution of a current Member includes any Capital Contribution previously made by any prior Member regarding that Member's Units. The value of a Member's Capital Contribution is the amount of cash contributed to the Fund.

**(m)Code**

References to the *Code* or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and any corresponding Treasury Regulations. References to the *Treasury Regulations* are to the Treasury Regulations under the Code in effect. If a particular provision of the Code is renumbered or a subsequent federal tax law supersedes the Code, any reference is to the renumbered provision or to the corresponding provision of the subsequent law, unless the result would be clearly contrary to the Members' intent as expressed in this Agreement. The same rule applies to Treasury Regulations references.

**(n)Fund**

*Fund* means RENTDUE Capital Fund 2 LLC, a Wyoming limited liability company.

**(o)Fund Minimum Gain**

*Fund Minimum Gain* means the minimum amount of gain that would be realized by the Fund if the Fund disposed of all Fund property subject to the liabilities in full satisfaction of those liabilities, computed under Treasury Regulation Section 1.704-2(b) and (d).

**(p)Fund Representative**

*Fund Representative* is defined in Section 2.02.

**(q)Contributing Member**

*Contributing Member* is defined in Section 4.11.

**(r)Cram-Down Contribution**

*Cram-Down Contribution* is defined in Section 4.13.

**(s)Default Amount**

*Default Amount* is defined in Section 4.13.

**(t)Default Loan**

*Default Loan* is defined in Section 4.11.

**(u)Fair Market Value**

*Fair Market Value* is defined in Section 19.20.

**(v)Governmental Authority**

*Governmental Authority* means any local, state, federal, or foreign government or its political subdivision; any agency or instrumentality of a government or its political subdivision; or any self-regulated organization or other nongovernmental regulatory authority or quasi-Governmental Authority whose rules, regulations, or orders have the force of law. Governmental Authority also means any arbitrator, court, or tribunal of competent jurisdiction.

**(w)Immediate Family**

*Immediate Family* means any Member's spouse (but not a spouse who is legally separated from the person under a decree of divorce or separate maintenance), parents, parents-in-law, descendants (including descendants by adoption), spouses of descendants (but not a spouse who is legally separated from the person under a decree of divorce or separate maintenance), brothers, sisters, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and grandchildren-in-law.

**(x)Indemnity Losses**

*Indemnity Losses* is defined in Section 17.04.

**(y)Independent Person**

*Independent Person* means any person who is not related to or subordinate to a claimant or respondent and has no personal or financial stake in the resolution of the controversy other than fair and reasonable compensation for services provided to resolve the controversy.

**(z)Legal Representative**

With respect to any individual, *Legal Representative* means a person's guardian, conservator, executor, administrator, trustee, or any other person representing a person or the person's estate. With respect to any person, *Legal Representative* means all directors, officers, employees, consultants, financial advisors, counsel, accountants, and other agents of the person.

**(aa)Majority Vote**

*Majority Vote* means a ratio of more than 50 votes out of every 100 votes that may be cast will determine the matter subject to the vote.

**(bb)Manager**

*Manager* means any individual or legal entity designated in this Agreement as a Manager. A Manager conducts the business of the Fund and is authorized to exercise the powers and duties of Manager detailed in this Agreement.

**(cc)Member**

*Member* means any person designated in this Agreement as a Member or any person who becomes a Member under this Agreement.

**(dd)Member Joinder**

*Member Joinder* means the joinder agreement in form and substance attached to this Agreement.

**(ee)Member Minimum Gain**

Regarding a Member Non-Recourse Debt, *Member Minimum Gain* means the least amount of gain that the Fund would realize if the Fund disposed of the encumbered Fund property in full satisfaction of the encumbrance.

**(ff)Member Non-Recourse Debt and Member Non-Recourse Deductions**

*Member Non-Recourse Debt* means nonrecourse Fund debt for which one or more Members bear economic risk of loss as defined in Treasury Regulation Section 1.704-2(b)(4).

*Member Non-Recourse Deductions* means for each Taxable Year, the Fund deductions that are attributable to Member Non-Recourse Debt and are characterized as Member Non-Recourse Deductions under Treasury Regulation Section 1.704-2(b).

**(gg)Permitted Transfer; Permitted Transferee**

A *Permitted Transfer* is a Units transfer made under Article Fourteen. A *Permitted Transferee* is the recipient of a Permitted Transfer.

**(hh)Protected Person**

*Protected Person* means:

- each Member;
- each Member's officer, director, shareholder, partner, member, controlling Affiliate, employee, agent, or Legal Representative and each of their controlling Affiliates; and
- each of the Fund's Manager, officers, employees, and agents or Legal Representatives.

**(ii)Qualified Appraiser and Qualified Appraisal**

A *Qualified Appraiser* means an appraiser who is a member of the American Society of Appraisers, Business Valuations Division, and accredited to perform business appraisals or valuations by this organization; or, alternatively, a certified public accountant accredited in business valuation by the American Institute of Certified Public Accountants. A *Qualified Appraisal* means any appraisal performed by a Qualified Appraiser.

**(jj)Required Contribution**

*Required Contribution* is defined in Section 4.09.

**(kk)Securities Act**

*Securities Act* refers to the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations under it that are in effect at the time.

**(ll)Taxable Year**

*Taxable Year* means the calendar year or any other accounting period selected by the Manager. Taxable Year is synonymous with fiscal year for all purposes of this Agreement.

**(mm)Third Party**

*Third Party* means any person who:

- is not a Member of the Fund;
- does not directly or indirectly own or have the right to acquire any outstanding Preferred Units or Common Units;

- is not a Permitted Transferee of any person who directly or indirectly owns or has the right to acquire any Preferred Units or Common Units; and
- is not an Affiliate.

With respect to any controversy concerning the Fund, *Third Party* means an individual who is not related to or subordinate to a claimant or respondent and has no personal or financial stake in the resolution of the controversy other than fair and reasonable compensation for services provided to resolve the controversy.

**(nn)Units**

*Units* means the ownership interest and rights of a Member in the Fund, including the Member's right to a distributive share of the profits and losses, the distributions, and the property of the Fund. All Units are subject to the restrictions on transfer imposed by this Agreement. Each Member's Units are personal property and no Member will acquire any interest in any of the assets of the Fund. A Unit may be further defined as a *Voting Unit* or a *Non-Voting Unit*. Units may be adjusted from time to time under Article Three.

**(oo)Unprotected Act**

*Unprotected Act* means any act, omission, or forbearance by a Protected Person that:

- with respect to any criminal proceeding, the Protected Person would have reasonable cause to believe was unlawful or
- constitutes fraud or willful misconduct.

**(pp)Voting Units; Non-Voting Units**

*Voting Units* means Units that include the right to consent or approve of certain Fund actions. Each Voting Member holds Voting Units. *Non-Voting Units* means Units that do not include the right to consent or approve of certain Fund actions.

**(qq)Voting Member; Non-Voting Member**

*Voting Member* means any Member with a Voting Interest. A *Non-Voting Member* means a Member with a Non-Voting Interest. Except as otherwise specifically permitted by this Agreement or with the prior written consent of all the Voting Members, a Non-Voting Member has no right to vote or participate in the Fund's management, or to act on behalf of the Fund in any way or for any purpose.

**20.2. Interpretation**

The following general provisions and rules of construction apply to this Agreement.

**(a)Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word *or*, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires or permits.

**(b)Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this Agreement are included solely for the reader's convenience and reference. They have no significance in the interpretation or construction of this Agreement.

**(c)Days and Business Days**

In this Agreement, *days*, without further qualification, means calendar days and *business days* means any day other than a Saturday, Sunday or a day on which national banks are allowed by the Federal Reserve to be closed.

**(d)Delivery**

*Delivery* is taken in its ordinary sense and includes:

- personal delivery to a party;
- mailing by certified United States mail to the last known address of the party to whom delivery is made, with return receipt requested to the party making delivery;
- facsimile transmission to a party when receipt is confirmed in writing or by electronic transmission back to the sending party; or
- electronic mail transmission to a party when receipt is confirmed in writing or by electronic mail transmission back to the sending party.

The effective date of delivery is the date of personal delivery or the date of the return receipt, if received by the sending party. If no return receipt is provided, the effective date is the date the transmission would have normally been received by certified mail if there is evidence of mailing.

**(e)Include, Includes, and Including**

In this Agreement, the words *include*, *includes*, and *including* mean include without limitation, includes without limitation, and including without limitation, respectively. *Include*, *includes*, and *including* are words of illustration and enlargement, not words of limitation or exclusivity.

**(f)Words of Obligation and Discretion**

Unless otherwise specifically provided in this Agreement or by the context in which used, the word *shall* is used to impose a duty, to command, to direct, or to require. Terms such as *may*, *is authorized to*, *is permitted to*, *is allowed to*, *has the right to*, or any variation or other words of discretion are used to allow, to permit, or to provide the discretion to choose what should be done in a particular situation, without any other requirement. Unless the decision of another party is expressly required by this Agreement, words of permission give the decision-maker the sole and absolute discretion to make the decision required in the context.

### **(g) Assignment**

In this Agreement, *assignment* includes any method—direct or indirect, voluntary or involuntary—by which the legal or beneficial ownership of any interest in the Fund is transferred or changed, including:

- any sale, exchange, gift, or any other form of conveyance, assignment, or transfer;
- a change in the beneficial interests of any trust or estate that holds any interest in the Fund and a distribution from any trust or estate;
- a change in the ownership of any Member that is a corporation, partnership, limited liability Fund, or other legal entity, including the dissolution of the entity;
- a change in legal or beneficial ownership or other form of transfer resulting from the death or divorce of any Member or the death of the spouse of any Member;
- any transfer or charge under a charging order issued by any court; and
- any levy, foreclosure, or similar seizure associated with the exercise of a creditor's rights in connection with a mortgage, pledge, encumbrance, or security interest.

*Assignment* does not include any mortgage, pledge, or similar voluntary encumbrance or grant of a security interest in any Units in the Fund.

### **(h) References to Transfer, Transferor, and Transferee**

In this Agreement, *transfer* includes any direct or indirect sale, transfer, assignment, pledge, encumbrance, hypothecation, or other disposition or attempted disposition. The term includes any involuntary transfer, such as a transfer that occurs by operation of law. If a person enters into a contract, option, or other arrangement or understanding to make a transfer, that contract, option, or other arrangement or understanding will itself be considered a *transfer*. When used as a verb, *transfer* has a correlative meaning. A person who makes a transfer may be referred to as a *transferor*, and a person who receives a transfer may be referred to as a *transferee*.

### **(i) References to Property or Assets**

Any reference in this Agreement to *property* or *assets*, without further qualification, must be construed broadly to include, as to any person, all property of any kind—real or personal, tangible or intangible, legal or equitable—whether now owned or subsequently acquired. The following items are each considered *assets* or *property* of a person: money, stock, accounts receivable, contract rights, franchises, value as a going concern, causes of action, undivided fractional ownership interests, intellectual property rights, and anything of any value that can be made available for or appropriated to the payment of debts.

### **(j) References to Individuals and Entities**

Unless further qualified in the context, any reference in this Agreement to a *person*, *party*, or *individual*, or the use of indefinite pronouns like *anyone*, *everyone*, *someone*, or *no one* must be construed broadly to include any individual, trust, estate, partnership, association,

company, corporation, or other entity or non-entity capable of having legal rights and duties. *Person*, without further qualification, has the same broad meaning as defined in Code Section 7701(a)(1) and includes any individual, trust, estate, partnership, association, company, or corporation. The Fund and its successors and assigns and each Member or Assignee and their successors, assigns, heirs, and personal representatives are all considered *persons* for purposes of this Agreement. *Natural person* is used to distinguish a human being from a *juridical person*, such as a trust, estate, partnership, association, company, or corporation.

**(k)Internal References**

Unless the context otherwise requires:

reference to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement;

reference to an agreement, instrument or other document means the agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by its provisions; and

reference to a statute means the statute as amended from time to time and includes any successor legislation to it and any regulations promulgated under it.

The Exhibits referred to in this Agreement must be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim in this Agreement.

**(l)No Presumption against Drafting Party**

This Agreement is to be construed without giving force to any presumption or rule requiring construction or interpretation against the drafting party. No party may claim that an ambiguity in this Agreement should be construed against any other party or that there was any coercion, duress (economic or otherwise), negligent misrepresentation, or fraud (including fraud in the inducement) affecting the validity or enforcement of this Agreement.

**Signed:**

MANAGER:

RENTDUE Capital LLC

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Date: \_\_\_\_\_

**SCHEDULE A**  
**SCHEDULE OF MEMBERS**

Member	Minimum	Rights
Class A Common Members (Reserved for Investors)	\$100,000.00	Equity, Non-Voting
Class B Members (RENTDUE Capital LLC)	N/A	Non-Equity, Voting